Volume LI] *June 1936* [*Number 2*

POLITICAL SCIENCE QUARTERLY

THE PATTERN OF THE NEW DEAL

THE initial embodiment of the New Deal took form in the burst of legislative frenzy between March and June, 1933. Since then a steady outpouring of legislation and administrative action has greatly extended the sphere of permanent government control over economic processes. As this program of action has increased in volume and scope, it has progressively escaped the powers of comprehension of even the well-informed citizen. The basis of firm understanding of the political issues raised by the New Deal is therefore necessarily lacking to the electorate at large. This has always been a problem of representative government, but its magnitude increases with the scope of governmental action. President Roosevelt has increased it by several sizes.

No method exists by which to reduce the diverse and conflicting purposes and accomplishments of the Roosevelt Administration to some ultimate distillation of the essence of the New Deal. It is possible, however, to break through the confusion of details and to isolate the essential patterns of thought which underlie the several parts of the program. The first task is to sort the items into more or less homogeneous groups and to examine the contribution of each group to the processes of political and economic control. The second task is to cut through these groups, isolating the temporary from the permanent. The final and much more difficult task is to consider certain composite consequences of the whole aggregated mass of action.

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Initially, one may set up five groups into which most New Deal measures fall. The first is government lending; the second, regulation of business and government enterprise; the third, regulation of money and banking; the fourth, measures for social amelioration; and the fifth, measures in the interest of special economic groups. Perhaps in that order the groups represent increasing degrees of deviation from government practices antedating the New Deal.

I

Through its various lending agencies the government has become the world's largest investment and mortgage banker. The lending function was extensively developed as an emergency policy by the Hoover Administration. Thus of the three primary agencies—the Reconstruction Finance Corporation, the Farm Credit Administration, and the Federal Home Loan Bank Board—the first and last were created under President Hoover, and the second consists mainly of pre-New Deal units. In the lending field, therefore, the contribution of the New Deal is mainly a matter of the extent, rather than the principle, of its operations. The R.F.C. has made advances to banks, insurance companies and other financial institutions, and to railroads to ward off insolvency or to provide working capital. It is worthy of notice that the powers conferred on the R.F.C. made it potentially the most radical agency created during the depression, permitting it to acquire direct interest in business corporations and to become a large or dominating factor in investment banking. It has, however, confined itself rather strictly to the function of financial salvage.

The Farm Credit Administration has as its primary unit the permanent land bank system, nearly a quarter of a century old. It also inherited some of the functions of the earlier Federal Farm Board for financing coöperative associations. Other lending activities have been added. The early function of the Home Loan Bank Board was to finance the institutions engaged in mortgage lending to home-owners. One of its newer units, the Home-Owners Loan Corporation, has made direct mortgage loans in large amounts. The functions of both the farm and

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home loan agencies during the present Administration have centered, first, on salvaging large numbers of small property-holders from onerous mortgage terms, and second, on assuring a supply of new mortgage funds. Though not itself a lending agency, the Federal Housing Administration is closely allied to these agencies, since in the campaign to promote repairs and new building its primary function is that of insuring loans and mortgages.

Though they were responsible for most of the budgetary deficit during the first year of the New Deal, almost no criticisms have been made of government lending activities, even in the most conservative quarters. The reasons no doubt are that they have not for the time being entailed much competition with private lending agencies, that their primary purpose is the protection of financial solvency and private equities, and that the government holds realizable assets against most of the advances. Presently, however, an issue will no doubt develop over the speed and completeness with which the government should vacate this field of action.

II

The second large group of measures, covering federal regulation and enterprise, may be broken down into subordinate groups. One of these is the extension of the established practice of public utility control. Though monopolistic public utilities have mainly been regulated by state and local agencies, federal intervention, based upon activities transcending state lines, has been extensive. In this field several new steps have been taken, covering telephone, telegraph, radio, interstate transmission of electrical energy, and motor transportation. All these measures have been contested by affected interests and quite reasonable doubts exist concerning the wisdom of some of their parts. But they do not introduce any new generic categories of federal functions. The most striking development is the reorientation of federal transportation policy. Regulation of railways was introduced to prevent exploitation of the public either by the carriers or by large industrial combinations enjoying discriminatory rates. Regulation of buses and trucks is

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now being introduced to protect the railways themselves from the financial consequences of the highly competitive situation which has developed.

The field of securities regulation, though not exactly an extension of past lines of action, has had preparatory analogies. Stock market regulation is analogous in kind to controls already existing over the organized grain and cotton exchanges. The Securities Act, requiring reasonably ethical conduct on the part of investment bankers, has a natural affiliation both with the anti-trust law policy of outlawing unfair trade practices and with Federal Reserve control over the commercial banking segment of the capital market. The program of action is almost exclusively confined to the removal of abuses, though in the underlying philosophy there is an element relating to the control of the capital markets as an aid to economic stability. In their original forms, the proposed methods of regulation had extreme, not to say absurd, aspects; but the new controls have no aspects which are " radical " in the sense of modifying in any extensive way either the familiar patterns of the economic system or the precedents of earlier regulation.

Rather more than this needs to be said about the control over holding companies. This legislation is more than a removal of abuses. By initiating a dismantling process it strikes a blow against the concentration of financial power. But even this is not especially a novelty. A considerable dismantling of holding companies would be analogous in some features to the dissolution of the Standard Oil Company group and other great industrial combinations more than twenty years ago. This analogy fails in so far as holding companies are the financial superstructure of a system of local public utility monopolies, in contrast to the earlier attempt to restore the underlying industries to a competitive status. But the likeness in the curbing of power is the more essential aspect. Aside from this, the vital purpose is to remove the barriers to effective regulation of those industries which are permitted monopolistic forms of organization.

Somewhat different issues are presented by government enterprise. There have been many examples of this in the past,

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such as the post offices, navy yards, internal waterways, and land reclamation projects. Apart from aspects of the public works program, the principal New Deal example is the Tennessee Valley project, which has elements of similarity to the Boulder Dam project initiated under President Hoover. In its electrical aspects the difference is that public competition in the supply of electricity is being deliberately fostered, though even this differentiates it only in degree. And even good Republican administrations supported a competitive barge line on the Mississippi River. Though the New Deal cannot be charged with having gone very far ahead of past administrations in the field of public enterprise, the T.V.A. is a portent. It epitomizes a disbelief in the effectiveness of past forms of utility regulation. It advertises a belief in the propriety of public competition with private utilities. It proposes a "yardstick" test of the proper costs of electricity. It advances an experiment in the potentialities of consumer markets at low rates. Whether in promoting these tests it will adopt honest accounting standards of comparison is yet to be demonstrated. As a final observation, this project exhibits one of the oddest anomalies in New Deal policy toward the utility industries. While electrical utility control is being forwarded by public competition, transportation control proceeds upon the principle of reducing a highly competitive situation to one approximating regulated monopoly. The effort is to get electrical rates down and to get bus and truck rates up.

Of this whole group of New Deal measures relating to utilities and the security markets, the general statement can be made that they do not depart far in principle from lines of policy laid down in earlier administrations, particularly those of Theodore Roosevelt and Wilson. Square Deal, New Freedom, and New Deal have a number of common elements, all connected with curbing economic power and special privilege.

III

Monetary and banking measures carry one a little further from ancient moorings. The President's deliberate abandonment of the gold standard in the spring of 1933 was for a

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purpose never before known in any country, that of manipulation of the level of commodity prices in the supposed interest of economic stimulation. There are certain very strong arguments to be made for the actual departure from gold, both as an escape from the deflationary effect of British departure from gold and, even more, as a countermove against the dangerous inflationary political forces then existing. One especially deplorable effect was, however, that it brought to a halt negotiations looking toward coöperative international attack upon the financial and trade barriers to recovery.

The further policy of driving the foreign exchange value of the dollar down by the Warren gold purchase scheme represents one of the oddest penetrations of muddy thinking into high places that can be imagined. Had this manipulation been avowedly a special relief measure for farm and other basic products, the theory would at least have been comprehensible. There was never the slightest possibility that the plan would accomplish its avowed purpose of effecting a closely controlled upward movement of the "general price level". It was this policy which, perhaps more than anything else, precipitated the attack of economists upon the New Deal, less because they were convinced of substantial detrimental effects than because of official acceptance of a theory which outraged the intelligence. Though the gold standard is something of a sacred cow in conventional circles, most economists probably regard it as a very unsatisfactory standard. Many of them support it not for economic reasons but through distrust of the economic intelligence or political integrity of the persons who might "manage" the money system—a distrust in no way allayed by the monetary activities of the present Administration.

Little need be said about the silver purchase program. Serving no monetary purpose and disrupting the monetary systems of several other countries, it is essentially political bribery, purchasing the support of silver-producing states. The only possible defence of this low ebb of political morality is that it kept a bloc of Congressmen out of the ranks of the direct inflationists.

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The early banking legislation was mainly to restore the banking system to normal operation after the crisis of 1933. The permanent legislation of 1934-35, though much more moderate than the original proposals, is symptomatic of the New Deal trends. It concentrates a rather greater amount of power in the Federal Reserve Board. It implies a somewhat different orientation of its activities in the direction of explicit efforts at stimulating and stabilizing economic activity through credit control. It also makes the Board somewhat less well insulated against possible political control. Federal insurance of bank deposits is a rather striking step—of highly debatable merit when placed on a permanent basis. It carries with it, also, the prospect that all banks will be forced into the Federal Reserve System, thus for the first time accomplishing some unity of administrative supervision. If one can assume able administrative personnel, developments in this direction appear capable of accomplishing useful results in the improvement of American banking, which sadly needs improving. The considerable controversial warmth that characterized preliminary discussions isolated as the basic points of dissent a distrust of too much political control over central banking authorities and a technical difference of opinion over quantitative and qualitative aspects of credit control.

The whole program of financial legislation evinces an intent to utilize monetary and credit control for economic stimulation during the depression and economic stabilization in the long run. No theoretical unity, however, connects the different parts of the program. And nothing that the Administration has so far done in the least forwards the theory or practice of economic stabilization.

IV

Measures for social amelioration include a temporary program of emergency relief and employment for the economically distressed and a permanent program of old age pensions and unemployment insurance. Until they were swept away, there were also the N.R.A. provisions for work-spreading, minimum wages, abolition of child labor, and other items. The latter,

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though animated by praiseworthy motives, constituted a pattern of labor legislation complicated beyond all understanding and non-administrable to boot.

The relief program takes the federal government into an entirely new field of action implying, in fact if not officially, a very far-reaching principle, that of federal assurance of a minimum livelihood for all citizens. This principle is likely to place unforeseen responsibilities upon the government in view of the likelihood of continuing unemployment on a large scale. Though novel, federal sharing of the relief burden with state and local agencies appears to have been accepted by the nation at large. The principal issue raised, therefore, is whether the expensive system of work relief initiated during the past year shall be abandoned in favor of subsidizing direct local relief on a diminished scale of federal responsibility. Since the relief activities are responsible for most of the budget deficit, this issue is centrally related to the problem of balancing the budget.

A public works program has a special rationale of its own in relation to economic stimulation and ought not to be confused with a program of work relief. Since the Administration has chosen to confuse them and has subordinated the former to the latter, public works can be passed over as a relatively unimportant element in the attack upon the depression.

The plans for old age pensions and unemployment insurance are a permanent implementation of the principle of continuity of livelihood. It is hard to allege any good reason (apart from "American self-reliance") why the insurance principle and tax resources should not be applied in a large way to removing the more harassing aspects of economic insecurity. But the Social Security Act, apart from doubtful constitutionality, is a very imperfect one. Especially in its fiscal aspects, both in the levying of contributions and in the management of reserves, it was passed with no clear picture of the problems or economic consequences. For the largest revenue bill ever passed by Congress, with an ultimate annual revenue charge of perhaps $4,000,000,000, this is hardly excusable. It is not unlikely that the whole plan is jeopardized by its legal, fiscal,

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and administrative imperfections. Indeed, the whole group of ameliorative measures — N.R.A. labor codes, relief, and social security—displays the New Deal at its best and almost at its worst, as humane, bold, careless, and muddy-minded. Little capacity is shown for building even its best purposes into a solid permanent structure.

V

The groups of New Deal measures surveyed to this point, while they represent a very considerable increase in the scope of federal action, display no elements in serious disharmony with the familiar pattern of economic relationships. The final group, however, introduces striking innovations in the form of assistance to special economic groups through collective control of markets. It reveals a serious loss of faith in the merits of economic competition, and therefore portends the possibility of far-reaching modification of the economic system. The novel principles of control found embodiment mainly in the Agricultural Adjustment Administration and the National Recovery Administration, both now swept away by fiat of the Supreme Court. Nevertheless, they represent so vital an element in the pattern of New Deal thinking, that they must still be included in current descriptions.

It is perhaps best to approach an examination of this part of the New Deal with the supposition that what was originally intended was less an experiment in "economic planning" than a series of attacks upon what were considered serious special situations engendered by the depression. Only as they took on prospects of permanence was it necessary to invent a covering philosophy. The philosophy is more important than the emergency aspects when one is attempting to discover what the New Deal signifies.

The N.R.A. displayed a willingness within the New Deal to plant the seeds of a radically reconstituted industrial organization. Its originators expected of it a number of things mainly connected with ameliorating the effects of the depression upon workers and with mitigating the deflationary effects of intense competition. They also entertained a rather foolish theory

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about its power to stimulate purchasing-power through higher aggregate wage payments. What General Johnson made of it was an agency for bribing industrial groups to promote the labor objectives by giving them privileges of market control. Out of the atmosphere of mad haste which surrounded this bargaining, came as an end product so absurdly chaotic a mass of non-administrable rules that the Administration should be profoundly grateful to the Supreme Court for relieving it of its embarrassing offspring.

The restrictive philosophy which animated the N.R.A. propounded the paradox of seeking recovery through diminished production. It also had in it the implication of reconstructing the economic system along quasi-monopolistic lines. In moments of reflective leisure, if such they enjoy, the nation's business men might ponder the thought that it was their own representatives who pressed for the most "radical" economic innovation which the New Deal has brought forth. Accepting the little-scrutinized desires of self-interested groups as proper standards for public action, the N.R.A. showed how a well-meaning experiment based on vague thinking can be corrupted by progressive opportunism, unanchored to principle. Now that it is gone one can only suppose that the sound apprenticeship of industrial groups in ways of suppressing competition is currently expressing itself in an increased amount of unregulated private monopoly. Any way one looks at it, that is an ironical aftermath.

An important vestige of the N.R.A. remains in the Bituminous Coal Control Act. So far as constitutional limits yet to be determined permit, further developments may be expected in the control of industries which are in a peculiarly unsatisfactory state of organization. It is a matter of great interest and significance that the industries marked out for public attention are those deemed to be "destructively" competitive, in contrast with earlier federal preoccupation with monopolistic tendencies in industry. Neither under the N.R.A. nor since has the Administration exhibited the slightest interest in the problems of industrial monopoly, and it is not known to have any policy upon the future of the "archaic" anti-trust laws.

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Another N.R.A. vestige is the Labor Relations Act protecting the right of workers to organize against the union-fighting tactics of employers. The merit of public encouragement of the labor movement is something that cannot be placed under review here. It is, however, pertinent to note that such encouragement is in harmony with the Administration's practice of recognizing and giving special consideration to organized economic groups.

Ignoring some of its aspects, the primary program of the A.A.A. was to restrict agricultural production, thereby to raise the price of farm products, and to add to farm incomes a bonus benefit derived from taxes levied on the processors of these products. Restriction was accomplished mainly through voluntary private agreements to reduce acreage, but in the case of cotton, tobacco, and potato growers through punitive taxes. The program was originally presented as a "recovery" measure, but at the end there existed no doubt of the intention to perpetuate it. Originally the supporting argument stressed temporary loss of foreign markets and a disastrous collapse of prices during the depression. Later it ran more in general terms of the necessity for the government to maintain the "balance" between producing segments of the economic system. In all official statements the emergency aspects and the long-run aspects were so intertwined and confused that it was quite impossible to divine where the Administration thought it was ultimately headed for, assuming that it had the slightest idea—which it probably had not.

The agricultural program implied permanent reduction of exports, progressive inclusion of other products, progressively intimate control of production, and continuous difficulty in controlling dynamic changes in methods of production. The political portents were no less striking. A solid block of political support was purchased. The pressure group tactics of the old tariff game, the least edifying spectacle in the nation's history, were potentially magnified manyfold. And the intimate administrative supervision of economic affairs was added to the functions of government. The foundation of permanent support for such a program must be either a profound optimism

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concerning the quality of the persons who will be selected to run the government during the unfolding of its inherent logic, or a belief in the inherently catastrophic consequences of the forces prevailing in a relatively unregulated economic society.

The essence of the program was that of effecting a redistribution of income among economic groups, both by controlling production and by taxing consumers and distributing the proceeds among special groups of producers. If restricted to farmers, the philosophy underlying this is the presumption of some peculiar social benefit from protecting the relative prosperity of the farm community. This may be extended, as in some degree it was under the N.R.A., to apply to all "little fellows", as a basic protection against the latter-day consequences of the concentration of economic power. Extended, as the President and the Secretary of Agriculture sometimes have implied, to a public responsibility for the relative well-being of all economic groups, it is the most far-reaching and portentous doctrine ever to impregnate American political and economic thought. The farm program was (and even in its new disguise of "soil conservation" still is) a partial embodiment of a philosophy of "economic planning" which has its New Deal stronghold in the Department of Agriculture and which keeps timid conservatives awake at night.

All this may seem a somewhat irrelevant exercise of the imagination to many persons whose thought ends with the proposition that "something needed to be done for the farmer". But the answer seems justified that the economic thinking back of the agricultural program (and of N.R.A.) raises the most important issues of public policy which have appeared since the Civil War.

VI

The federal budget reflects the financial aspects of many lines of action under the New Deal. It therefore needs to be looked at separately, especially since it has become a primary focus of political controversy. The essential facts can be simply stated. The government has been running a deficit at the rate of about 3 billion dollars a year and the total net debt has passed 30

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billions. For the fiscal year of 1936-37 the estimated budget covered by taxes is about 5½ billions. This includes nothing for unemployment relief or the bonus, which may together add 4 billions or more to the accrued deficit. During the current year the debt service will run to about 1⅓ billions, of which about 800 millions is for interest and the remainder for statutory debt retirement. Due to lower interest rates the interest charge is less than it was at the end of the war. The budget deficits have been financed by selling Treasury debt obligations to banks, which have very large unused lending capacity.

No one can estimate with any accuracy how large the debt could grow without undermining the government's credit, but there is no reason to suppose that the power to borrow is anywhere near exhaustion. The politically inspired argument that apprehension over the mounting debt is retarding recovery appears to lack substance. And the well-developed cases of nervous agitation over the budget are among persons committed to the idea of a government with narrow functions, who are stirred by distrust not only at unconventional fiscal practices, but at any important extension of the field of public action. Nevertheless the time has arrived when every dictate of fiscal prudence points to the necessity of rapidly bringing revenues and expenditures into balance. Not only is the future being too heavily mortgaged, but also a too ingrained habit of avoiding taxes can ultimately have only the most disastrous consequences.

Whether deficit financing is a good thing in times of depression is a subject for endless and mostly bootless argument. Economists are pretty well agreed that, wisely directed, it can have not only compensatory but also stimulative effects. The present Administration is not notable for cutting its cloth to any carefully thought out pattern of expenditure. Its spending has, however, no doubt cushioned the most distressing impacts of unemployment. Rigid economy and continuous budget balancing is essentially a poor depression policy. Deficits, however, run into money, and, if large, must soon run their course. This is the situation which is now overtaking the Administration and which, if the depression continues, will

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make it rue its early open-handedness. Big deficits are a gambler's chance that prosperity is "just around the corner".

The argument immediately in prospect is whether expenditures shall go down or taxes go up, or, more accurately, which shall be the primary approach to balancing the budget. The inherent logic of the New Deal is that of routing a larger amount of the national income through the federal Treasury. Relief expenditures are likely to continue in sizable amounts for some years. Continuing agricultural subsidies are in prospect. Meantime the taxes for old age pensions and unemployment insurance are beginning to take effect. There is therefore little prospect of federal expenditures falling under 6 billions if the Roosevelt Administration is continued. How much paring the Republicans could accomplish is hardly worth speculating upon, but one may reasonably guess that it would not be very much.

The tax program for meeting the ultimate bill is only partly developed, and to date shows no evidence of comprehensive fiscal planning. In this connection, early developments were in the direction of more indirect taxation and, in connection with the farm program, regressive taxation. This trend can be seen in the fact that less than 30 per cent of the tax revenues in the past fiscal year derived from the combined individual and corporation income taxes, as compared with over 50 per cent in 1932. By some political miracle heavy indirect taxes were introduced upon the essentials of life with almost no outcry. The trend is somewhat reversed by partially substituting an undivided profits tax for the outlawed processing taxes. In this connection it is to be noted that almost the whole burden of the social security program will be upon low incomes. The general regressive tendency in the tax structure is rather odd—not to say ironical — in a New Deal biassed toward income redistribution downward.

Were one to pursue the subject further into the details and inter-relationships of the tax, debt, money, and banking aspects, it would become abundantly clear that little admiration can be bestowed upon the fiscal stewardship of the Administration. Action has taken place planlessly in separate compartments,

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whereas fiscal policy requires centralized supervision. Fiscal behavior reflects the besetting weakness of the whole New Deal, that of piecemeal action.

VII

Further progress toward a clear view of the New Deal requires that what is temporary be isolated from what is permanent. This cannot be done simply by sorting specific legislative measures into two groups, since some measures include both temporary and permanent elements, and some which were regarded as temporary begin to take on prospects of permanence.

Temporary objectives may be divided into two general classes, the relief of distressed persons and the stimulation of economic recovery. Concerning the former little more need be said. For humane reasons the expensive policy of work relief has been developed, but for budgetary reasons the drift appears back toward the earlier system of federal subvention of local direct relief. If the federal government continues to accept responsibility for the policy that "no one shall starve", it appears entirely probable that relief activities will be less temporary than is generally supposed and that they will constitute a continuing substantial charge against the federal budget for years to come. This probability is seldom recognized in prognostications of the future tax load.

It is in the "recovery" measures that the Administration displays the catholicity of its experimental temper. Sponsored by different groups of persons, various lines of action have been followed which are bound together by no comprehensive theory of how to fight a depression. In some measure they are mutually self-defeating. They represent every degree of economic sense and nonsense. Collectively they merely exhibit the President's readiness to act on many fronts with little comprehension of the economic consequences or the mutual interrelationships of the several lines of action. "Action without thought is vain" is a maxim which has had no place in the Administration's so-called "recovery" program. This uncritical readiness to experiment without analytical thought must

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be set down as the most marked trait of the New Deal in its early phase, and one which carries over in some degree to the permanent program.

The basic "emergency" program can be reduced to a few headings: (1) public lending, combined with insurance of private construction loans and mortgages; (2) restoration of confidence in the banking system, combined with exhortations to private lenders; (3) free public spending on relief and public works; (4) monetary manipulation for the purpose of raising the price level and offsetting the deflationary effects of currency depreciation in other countries; (5) promotion of collective business action under N.R.A. codes; (6) work-spreading (perhaps better classified as a relief measure), in some degree the support of collective bargaining, and the diversion of income to wage payments under N.R.A. codes; (7) restoration of farmers' "purchasing-power" through controlled production, higher prices, and benefit payments. In addition, the revised bankruptcy laws, early railroad legislation, and other miscellaneous items had emergency aspects.

One of the most interesting conflicts of outlook may be seen by isolating the parts of the early program which display an optimistic, or prosperity, habit of thought and those which display a pessimistic, or depression habit, of thought. The monetary, lending, and spending activities look forward to expansion, prosperity, and an ability to pay large bills. The restrictive activities of the A.A.A. and N.R.A., based on the idea of limited markets, display an intent to ration limited market opportunities for gain in ways antipathetic to industrial expansion.[1]

There is very little prospect that action in any of these fields will be entirely temporary. Permanent remnants of the lending program are likely to be left behind in the form of a vestigial R.F.C. for railroad financing, an expanded coöperative agricultural credit system with elements of direct lending, and quite possibly a federal system of insuring, if not of making, mortgage loans. Free public spending will doubtless

[1] This view is developed by Dr. Karl Pribam in his book, *Cartel Problems*.

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be curtailed in the interests of balancing the budget, but somewhat permanent responsibilities for "cushioning" depressed conditions appear to have been accepted. Permanent banking legislation, extending the power of both the government and the Federal Reserve Board, has already been passed. The intent to salvage parts of the N.R.A. program is exhibited in labor and coal legislation, and is held in check only by present constitutional limitations. The purpose to protect farmers permanently against the impact of free market movements is quite clear in current efforts to sidestep the Supreme Court decision outlawing the A.A.A. The future of monetary policy is beyond prophecy, since current gestures toward stabilizing the foreign exchanges are entirely at odds with the President's unrecanted ambition to stabilize prices permanently through monetary means. Taken collectively, the underlying logic of the emergency measures is that of permanent extension of federal power in many directions.

The roster of avowedly permanent measures is impressive. As an extension of federal responsibility the most important of all is the Social Security Act, though its prospects of mitigating the hazards of old age and unemployment are much impaired by constitutional, fiscal, and administrative defects. In the aggregate, also, great importance attaches to the group of measures dealing with public utilities and securities, including regulation of investment bankers and securities exchanges, dismantling of the system of public utility holding companies, federal competition in the electrical power field through the T.V.A., regulation of interstate power transmission, regulation of motor transportation, and other items. Throughout this group is displayed an active intent to regulate more fully the privileged and monopolistic industries, to restrain the concentration of private economic power, and to eliminate financial abuses. Finally, the banking legislation exhibits the intent to expand control over the central financial mechanism of the economic system.

It is in its permanent elements, including the permanent offshoots of the emergency program, that the continuing significance of the New Deal must be found. The central principles

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of action are not difficult to state. The general orientation is a belief in the need for much more governmental guidance and control of economic relationships than have been customary. This, however, is rather meaningless in the abstract. More narrowly examined, the program of action reveals four guiding principles: extension of regulation along the lines of well-established precedent; responsibility for minimum livelihood; responsibility for maintaining economic stability; and sponsoring economic groups, with a responsibility for maintaining "balance" between them.

Taken one by one, these guiding principles imply varying degrees of departure from the familiar pattern of economic relationships. The amount of public clamor against legislative items is no guide to the degree of "radicalism" they exhibit. The greatest weight of public invective, for example, has been thrown against the laws which curtail or impair the privileges of articulate groups, such as the utilities magnates. The most radical innovations—the A.A.A. and the N.R.A.—on the other hand have been floated on the great "conservative" pools of farm and business sentiment. Expressions of favor or disfavor emanate from groups, not from "the public", and vary in tone according to whether the government is giving or taking away.

The first principle, that of curtailing privilege and remedying abuse, is an established and unavoidable concomitant of the private enterprise system—a statement which is somewhat parodied by the exact content of new measures of regulation. The second principle, that of minimum livelihood, equally implies little impairment of existing economic relationships, and requires only careful attention to the fiscal and administrative problems involved.

One cannot be quite so sure of the potentialities of the stability principle. If confined to action prepared by competent economic analysis it can currently be embodied only in careful experiments in the control of credit. Potentially, however, "stabilization" may involve much more than this. It cannot be convincingly demonstrated that economic stability and economic liberty are compatible. No economic clairvoyance now exists which can illuminate the possible economic

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consequences of a conscientious adherence to the principle of stability. It might entail quite intimate control over the processes of capital accumulation and investment, and possibly also a much more intimate control of industrial operations.

The fourth principle of group sponsorship is the only New Deal innovation which necessarily implies extensive changes in the character of the economic structure, and it has little power to be embodied in the reconstruction of relationships without amendment of the federal constitution. Though its striking manifestations have been strangled by the Supreme Court, the principle is nevertheless the yeast in an economic and political ferment of tremendous potential magnitude. It implies desertion of primary reliance upon competition for economic guidance and protection. Developed very far, it would transform representative government into the clash and compromise of organized economic groups—something it has long been, in part, but not as a matter of theory and principle.

Performance is something different from principles. One may approve a principle but deplore the manner in which it is translated into action. At the level of technical performance the New Deal is a very defective product, in both its temporary and permanent aspects. The lack of critical acumen and the elements of inconsistency in its economic thinking; the neglect of elementary administrative precepts; the careless drafting of legislation; the fantastic estimates of the elasticity of the judicial mind; the obscurity of its guiding principles: all these things must be thrown in the balance against many excellencies in detail and the weight of its good intentions. The precarious legal, fiscal, and administrative situations of many elements in the program reflect these defects.

Many of the defects of quality may be attributed largely to the speed with which so extensive a program has been introduced and to lack of training and ability in the responsible personnel. Major legislation capable of fully occupying the attention of Congress for ten or twenty sessions has been crowded into three. Time may repair many of the technical aspects. But these are much less important than what is happening to American political and economic life in the large.

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VIII

At the expense of considerable intellectual effort, one may attain a sound comprehension of the separate items of New Deal legislation, and appraise their merits and defects by reference to appropriate criteria. By groups of items, as in the preceding pages, one may discover the patterns of thought underlying the New Deal in its several major parts. But final distillation of some quintessential meaning is another matter. The truth is that there is no such meaning. This is because action has proceeded in separate compartments without reference to any general harmonious pattern. The parts are the creatures of different sets of persons with diverse philosophies, many of whom view one another with mutual mistrust. The only element of unity is that the parts have been mixed, without being blended, in the mind of the President. The New Deal cannot, therefore, be said to have a philosophy. It points no guiding direction in the larger matters of political and economic organization.

Nevertheless it is not to be described, as some have contended, in mainly opportunistic terms. It has principles, however unblended they may be. In addition to a somewhat illogical experimental temper, the Administration has displayed a fighting spirit both for its humane objectives and for the reform of economic abuses. A deep distrust of the private holders of great economic power directs many of its steps. It is, indeed, in this connection that its split personality is most fully revealed. In some aspects it seems to share President Wilson's adherence to the traditional American philosophy of relative equalitarianism and his nostalgia for the old America of small proprietors. But elsewhere it presents a philosophy of economic planning implying a world of highly organized groups and a government engaged in shepherding the groups in collective forms of action.

As emphasis is given to one or another of these aspects, the New Deal may be viewed as a hurried and blundering attempt to effect reforms long overdue in the system of competitive capitalism, or as an effort to modify the characteristics of the

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system by the introduction of collectivistic elements. Both aspects are present. So long as action is confined within existing constitutional limits, the former will be the dominant one. But the collectivist urge to do things not within the scope of constitutional powers is strong, and the Administration may reasonably be thought only to await propitious political circumstances for the extension of its powers. In other words, it is more radical than its acts, but how much more it probably does not concern itself to inquire. It acts in detail and leaves to others the task of rationalizing its acts into patterns and creating philosophies to explain them.

In its gestures both toward purifying the competitive régime and toward replacing it, the Administration exhibits its basic enmity toward the concentration of economic power which has marked the latest phase of economic development. In this it is truly on the scent of the most critical problem of organization for a free people—how to run the modern world without plutocrats. On this question, it is of two minds, on the one hand, to appeal back to the atomistic competitive solution with safeguards against abuses and against loss of livelihoods, and on the other, to foster the concentration but to transfer much of the power to the government.

Long continued, movement on the lines of the New Deal—without chart or compass—promises the worst of both worlds, an impairment of the efficiency of the competitive system without the compensating benefits of rationalized collective action.[2] This is certain to be so if one can look forward to no improvement in the level of analytical thought and administrative performance over what the New Deal has up to now displayed

[2] This sharp form of dichotomy, stated so briefly due to considerations of space, somewhat overstates the position which I should be willing to defend in detail. As everyone should know, "pure" forms of economic organization are impossible, and the possible combinations of "planned" and "unplanned" elements are very numerous. Judgments of the merit of any particular combination must rest upon particular circumstances and upon the criteria applied. The introduction of collectivist elements into a primarily individualistic economy need be neither "inconsistent" nor objectionable. In an analytical view, nevertheless, the reliance of operating efficiency upon the dominance of a single principle of organization seems well established.

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This must be said for the New Deal, that it plays the limelight on the right problems. Insecurity of livelihood, the instability of economic operations, the concentration and abuse of private economic power, the political pressure of organized economic groups — these *are* the problems which the contemporary economic scene poses to the public authorities. There is, however, no reason to suppose that this Administration will make a rationally consistent attack upon them. Its political strength lies in the irrational elements. By the separate items of its program it binds to itself the support of persons with heterogeneous convictions, prejudices, and interests. It lives by its lack of a guiding economic philosophy.

Sadly enough, the expectations are no better from any alternative Administration likely to gain power. The present political opposition, compounded mainly of such disparate elements as an archaic "frontier" individualism and the pretensions of economic privilege and power, displays little comprehension of what the contemporary problems of public policy essentially are. Probably, its attainment of power would entail treachery to its individualistic principles and require an irrational program based upon the necessity for the political purchase of group support. Probably, also, it would not dare undo much of what the New Deal has done.

Representative government has always been a matter of the lesser evil. One takes it on faith that its processes will cast up rulers relatively competent to perform the functions imposed upon them. This was not so difficult a faith when the functions were narrow. It is a harder one to hold when the functions reach into the intimate control of economic processes, exercised by amateurs selected by persons ignorant of the significance of the issues placed before them. The fact remains, however, that the political destiny of the country continues to rest upon the intuitive genius of the mass of people to choose persons not too utterly incompetent in the exercise of great powers.

Political destiny may perhaps best be left to care for itself, since little can be done about it. This, however, needs finally to be said about the New Deal as the current embodiment of destiny, that it has rediscovered some fundamental social values

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which had been mislaid since the war; it has dismantled some archaic elements in the system of self-reliance; it has initiated action in some fields where action was needed. Both inadvertently and by design, it has equally introduced innovations ill-designed to promote the healthy operation of either economic or political processes. The bold and optimistic experimental temper, whatever its value in the days of crisis, soon lives out its merit. Unless the New Deal can reduce its larger objectives to a coherent program capable of explicit statement, in spite of fine words to the contrary its meaning will have eventually to be written down as a contribution to economic and political obscurantism.

The weakness will be best understood by those old enough to have been aroused by Theodore Roosevelt or Woodrow Wilson. Each of them presented living issues under an articulate philosophy comprehensible to the masses. Is the contemporary world so complex, or its thought so confused, or its politics so degraded that such leadership is incapable of repetition? One may be compelled to travel with skippers having little knowledge of the sea, defective navigating instruments, and indefinite ports of call. But one cannot be expected to be very happy about it.

To preserve what is best in the American tradition requires that the fundamental precepts of liberty be maintained. But liberty is not enough. Every well-informed observer understands that provision for the common needs of economic security and stability calls for a greater exercise of public authority than has heretofore been practised. He understands also that liberty is the mother of abuses and of undue concentration of private power.

It is not impossible, nor even very difficult, to draw up a consistent program which, while adding to the economic functions of government, would remain basically faithful to the better traditions of American economic and political organization. There may, of course, exist a reasonable difference of opinion upon whether or not the economic world has passed into a phase of development in which the old rules of organization are archaic. But if this is the issue, it ought to be brought

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clearly into the focus of political discussion. An Administration which believes this but refuses to bring it to issue, or else does not know whether or not it believes it as is probably the present case, is clearly in no position to formulate a consistent policy.

These observations are somewhat painful to make because of one's feeling at times that the New Deal might be the forerunner of an enlightened permanent policy. It embodies many admirable sentiments and has acted, clumsily, in a number of appropriate directions. It does not, however, inspire confidence as to the intelligence with which the government may be expected to administer greatly enlarged economic authority, and it has not formulated a group of policies which will stand up under inspection as a permanent pattern.

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FISCAL RELATIONS OF CENTRAL AND LOCAL GOVERNMENTS IN GERMANY UNDER THE WEIMAR CONSTITUTION[1]

THE heritage of poverty and government debts left by the war forced drastic revisions in tax systems in all the countries of Europe. Uniform taxes were essential to the husbanding of slender resources, and the centralization of tax administration proceeded much more rapidly than centralization of the spending agencies. Consequently it was imperative for the central governments to provide the subordinate governments with substantial revenues from national sources. Increased subventions followed, and with even greater frequency, the distribution of fixed percentages of specific national taxes.

Subventions have long been an accepted device for controlling and directing local government activities, as well as for giving financial aid. The sharing of specific national taxes on a large scale is comparatively new. Isolated instances of such shared taxes are to be found in European tax systems before the war, but they are of minor importance. Local governments in pre-war Continental Europe depended, for the most part, on a combination of independent local taxes and local additions to state taxes. Today, while local additions to state taxes still dominate some local tax systems, notably that of France, the sharing of national taxes, levied at uniform rates, is to be found in practically every country, and in a number of countries these shared taxes have become a major factor in local finances. They are not so readily adapted to control as subventions, but they offer a direct method of compensating local governments for revenue sources transferred to national administration. In Austria, Germany and Russia the distributions of national taxes

[1] The writer gratefully acknowledges a grant in aid from the Social Science Research Council, which greatly facilitated this study.

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to subordinate governments are sufficiently large and numerous to characterize the entire national and local tax system. The advantages and shortcomings of such a system are probably best studied in Germany. The Austrian system is similar, but neither the amount nor the proportion of federal taxes distributed to state and local governments is as great as in Germany, and the fundamental difference in the structure and functions of government would seem to make the Russian experience of less significance elsewhere.

Before the adoption of the Weimar Constitution the German tax system conformed to the usual pattern for federal states. Almost complete separation of national and state tax sources prevailed, with customs duties and other important indirect taxes reserved for the national government, and the direct taxes largely in the hands of the state and local governments. The Constitution of 1871 had granted the federal government practically unlimited tax powers, and in so far as the Reich invaded the field of state taxation the states were forced to withdraw. Competitive state taxes were not tolerated. But the political power of the states was strong, and while the federal government gradually extended its tax sources, the states retained the important direct taxes even during the period of the war. Bismarck's attempt to make the states financially dependent on the Reich resulted in a complicated system of largely counterbalancing payments between the two governments, but failed to achieve its end. The acute financial situation arising out of the war required radical changes in the tax system. Only through uniform and centrally administered taxes could the Reich hope to meet its heavy financial obligations from its depleted resources. Financial considerations were only one factor in the larger problem of political unity, but fiscal centralization was an important step to this end.

The Weimar Constitution, adopted August 11, 1919, increased the powers of the Reich at the expense of the states until it has been questioned whether Germany continued to be a federal state. It is significant that the *Staaten* of the Constitution of 1871 became *Länder* in the Constitution of 1919. Bismarck's dream of a powerful central government had at last

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been realized—under a republic. The Weimar Constitution gives the Reich jurisdiction over all taxes and income in so far as it may claim them for its own use (art. 8). Further, the Reich may refuse the states the right to levy taxes on the same bases as Reich taxes, or to levy taxes which in any way might impair the income of the Reich (art. 11). The Reich is given the right, also, to administer its own taxes (art. 11), and to control financial administration of state and local governments in so far as this is required for the uniform execution of national fiscal laws (art. 84). The fiscal position of the state and local governments is protected to the extent that the Reich must compensate them if it deprives them of former sources of revenue (art. 8), and it may not impose new duties on the underlying governments without at the same time providing them with new means of meeting the cost of such activities (art. 54). These provisions insure state and local governments of a limited income, but they offer no real guarantee of adequate income or any freedom in adjusting income to needs. Moreover, any concessions the Reich may have made to state and local independence elsewhere in the Constitution, it recaptured in the emergency powers conferred by article 48, which has made possible the emergency decrees that in recent years have replaced normal legislative procedure.

The work of building up a new tax system was begun immediately, and the basic features of the new system were established before the next fiscal year had begun. The Reich took over the administration of its own taxes, formerly delegated to state officials, and then proceeded to take possession of a number of former state taxes. The taxes transferred from the states to the Reich were the personal and corporation income taxes, the beer tax which had been left to the southern states at the time of the formation of the Empire, the land purchase tax, the net fortunes tax (*Vermögensteuer*), and the betting tax. The Reich had taken over the inheritance tax prior to the war, but the states, in addition to receiving a share in the yield, had been left with the privilege of levying surtaxes. This option was now withdrawn. A new and im-

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portant Reich tax, not previously exploited by the states, was the turnover tax, introduced during the war.

State and local governments were left with greatly depleted resources. The taxes transferred to the Reich had supplied state and local governments with two thirds of their tax income in 1913-14. The personal income tax alone had contributed more than half. When Minister of Finance Erzberger was asked what tax powers had been left to state and local governments, he is said to have replied, "The almost unlimited right to find new taxes."[2] State and local governments were still in possession, however, of land, building and business taxes, and a variety of consumption taxes. The Reich had assumed no obligations to correspond to the revenues taken over, and substantial contributions from the Reich treasury were necessary. The constitutional provision that the Reich must compensate the states for any sources of revenue of which it might deprive them, pointed to the return of taxes where they were collected, rather than to any redistribution of revenues to equalize burdens and resources; and this was the guiding principle in the redistribution of tax revenues that followed. The first provisions made for state and local governments would seem to have been adequate, and even generous, but they were nullified by inflation, and were substantially altered before stabilization was achieved.

Inflation reduced the state and local governments to beggars; and the Reich, with the only important source of revenue, the printing press, at its disposal, undertook to meet three quarters of state and local salary payments. These salary payments soon overshadowed tax distributions in importance. The actual duration of inflation was comparatively short, but its effects were far-reaching. The tangible financial consequences were to free state and local governments, as well as the national government, from debt, and to leave them with greatly enhanced public assistance burdens. It seems highly probable, also, that inflation accustomed state and local governments to

[2] W. Gerloff, "Schwebende Fragen des Finanzausgleichs" *Schriftenreihe des deutschen Städtetages*, 1928, Heft 5.

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the acceptance of national aid, as no ordinary revision of the tax system could have done, and perhaps encouraged them to take unbalanced budgets lightly and to borrow readily with little thought of the morrow. And the Weimar Constitution, whether through oversight or through the strength of the supporters of states' rights, had failed to place any check on state and local borrowing powers.

The Reich did not encourage any such attitude. Salary payments from the national government were reduced rapidly with stabilization, ceasing altogether with the beginning of the fiscal year 1924-25; and the number of government employees was promptly and materially cut. At the same time, however, the Reich tax distributions to underlying governments were increased over the original plan, by new and comprehensive tax laws governing state and local tax systems.[3]

Space cannot be given here for an account of the frequent changes in the law governing the relation of national, state and local tax systems which followed. Their significance lies primarily in the evidence they afford of dissatisfaction with the existing distribution. Suffice it to say that important changes took place annually, except for the comparatively prosperous years of 1928 and 1929. The accepted method of reimbursing state and local governments for lost tax revenues was to return fixed proportions of specified taxes to the state of origin as far as such procedure was feasible. Twelve different taxes have been shared at some period since the new system was put into effect, seven of them continuously, for a period of more than ten years. The proportions distributed have varied widely, both for different taxes and for the same tax at different periods.

The depression did not change the nominal percentages or the kind of taxes shared, excepting for the distribution of a share of the beer tax to all states in addition to the special compensation to the southern states, and the abandonment of the small merger tax distribution. The more important changes

[3] *Finanzausgleichgesetz*, June 23, 1923, effective April 1, 1923, and *Dritte Steuernotverordnung*, February 14, 1924, effective February 1, 1924.

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TABLE 1

PROVISIONS FOR DISTRIBUTION OF REICH TAXES TO STATE AND LOCAL GOVERNMENTS, APRIL 1, 1932

Tax	Percentage returned	Basis of distribution to states	Restrictions on distribution by state to local units	Special provisions
Income and corporation	75	Origin	To be distributed, at least in part, on basis of origin.	States guaranteed an amount per capita equal to 80% of average per capita distribution, but not to exceed ⅓ of state's share on basis of origin. Rm. 72,000,000 deducted from wage tax; Rm. 60,000,000 from assessed income tax, as estimated amount of surtax. Rm. 88,000,000 deducted as savings from salary reductions. Rm. 50,000,000 from general revenues to compensate for state and local losses from real estate tax reduction.
Turnover	30	⅔ in proportion to population; ⅓ in proportion to yield.	None	States guaranteed at least Rm. 375,000,000 from turnover and income tax share distributed on turnover tax base. Rm. 12,000,000 deducted from this as savings from salary reductions.
Land purchase	96	Where land has situs	At least half to commune where land has situs.	State may obtain 100% if it elects to administer the tax itself. Communes guaranteed average yield of any comparable tax levied prior to Jan. 1, 1918.
Beer	13.55 2.5 1.6 16.67	Collections in Bavaria Württemberg Baden. Of remainder, returned to states in proportion to yield.	None " " "	Maximum Rm. 78,000,000 " Rm. 15,000,000 " Rm. 10,000,000 Rm. 28,000,000 from general revenues to compensate communes for loss from reduction of local beer tax.
Motor vehicle	96	¼ in proportion to population; ¼ in proportion to collections weighted according to population density. If density is less than 5/6 of average, area reduced to 5/6. If density is double, average area is doubled.	Local share to be used only for main highways.	All to be used for highways.
Betting	96	½ to state where business is; ½ in proportion to population.	None	⅓ to be used for horse-breeding.

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resulted from decreases in the income tax and turnover tax guarantees, from deductions from the state and local share equivalent to estimated savings from enforced salary reductions, and from the failure to share the various emergency levies on income. The consequence was to reduce the state and local share of all income and corporation taxes combined below the nominal 75 per cent.

A summary of the provisions for distributing Reich taxes to state and local governments in 1932 is given in Table 1. It is apparent that even with depression the governing principle in the distribution of taxes to the states has been to return the money to the state from which it comes. It is also apparent, however, that there are important deviations from this principle, and there has been very little attempt to get the money back to the local jurisdiction from which it comes. The states have been left quite free to make their own financial arrangements with local governments.

The difficulty of determining the appropriate share of the different governments was very great at first. Many of the taxes were new, or so thoroughly revised that former yields were of little value in forecasting revenues. Even if there had been no change in the tax laws, previous experience would have been of little value. Ten years of war and inflation had played havoc with tax bases. Moreover, government needs were changing and uncertain. The first effective distribution, following inflation, proved to be overgenerous, considering the relative obligations of the national and the state and local governments. This may have been due to the difficulties of estimating, but in view of the fact that state shares were increased over the original plan, without waiting to see whether this was adequate or not, it would seem to be a tribute to the continued power of the states. The Reich had little interest in opposing state demands, owing to the probability that reparations payments would devour whatever surplus revenues it might realize. The taxes actually distributed to state and local governments exceeded budget estimates by nearly fifty per cent in 1924-25, and even in later years, with some experi-

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ence to go on, these tax distributions regularly exceeded estimates by considerable sums.

The Reich itself fared well enough at first. Making an extraordinary effort to build up its own tax revenues, and favored by improving industrial conditions, it closed the fiscal year 1924-25 with the astonishing surplus of half a billion marks; this in spite of reparations and the liberal concessions to the states. This was the only year, however, in which the national revenues were to exceed national expenditures, in spite of increases in tax yields in the next four years.

The rapid expansion of expenditures in the ensuing period was inevitable. National, state and local governments were stimulated by unaccustomed revenues, freedom from debt, the rationalization movement in industry, and the all-too-great eagerness of foreign capitalists to advance new loans. Welfare expenditures were greatly increased, in response to genuine need and to popular demand for an extension of social activities. The new republic was, after all, a socialistic government. An extensive and extravagant building program was undertaken in addition to the provision of essential housing. Less obvious but of considerably more importance in the yearly budgets were the increases in salary scales, made partly to compete with industry for able administrators, and partly, perhaps, for the purpose of obtaining leverage for future reductions, to prove economy and great need when reparations payments should press. The army of public officials likewise grew beyond the number necessary for efficient administration. The Social Democratic Party had to care for its own.[4]

This politics of waste and irresponsibility, more reminiscent of American than German governments, was short-lived. The peak of Reich generosity had been reached in the year following inflation, and the Reich gave ear to the pleas of overburdened taxpayers more readily than to the representations of state officials in ensuing revisions of the tax program. The Weimar Constitution had done its work well. Compromise succeeded compromise in the years that followed, but in spite

[4] J. Popitz, *Der künftige Finanzausgleich*, 1932, p. 27.

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of occasional victories, the states were steadily losing power to the Reich, and participation of the subordinate governments in national taxes was increasingly restricted. Rising tax yields, resulting from favorable industrial conditions, brought state and local governments increasing incomes for several years. By 1929-30, however, the sums distributed by the Reich began to decline, and when state and local tax yields likewise fell, beginning in 1931-32, incomes were seriously reduced..

TABLE 2

AMOUNT OF TAX REVENUES ADMINISTERED BY THE REICH AND BY STATE AND LOCAL GOVERNMENTS. 1913–14 TO 1933–34 [a]

Fiscal year	Total income from taxes administered by		Reich income from taxes administered by		State and local income from taxes administered by	
	Reich	State and local	Reich	State and local	Reich	State and local
	Million Rm.					
1913–14...	—	4,046	—	1,631	—	2,415
1925–26...	7,372	3,206	4,731	—	2,640	3,206
1926–27...	8,011	3,668	5,312	—	2,698	3,668
1927–28...	9,468	4,077	6,357	—	3,111	4,077
1928–29...	10,065	4,231	6,568	—	3,497	4,231
1929–30...	10,055	4,269	6,686	—	3,369	4,269
1930–31...	9,028	4,454	5,978	—	3,050	4,454
1931–32...	8,021	4,165	5,774	—	2,248	4,165
1932–33...	6,803	3,559	5,128	—	1,675	3,559
1933–34...	6,876	3,735	4,952	—	1,925	3,735
	Percentage					
1913–14...	—	100.0	—	100.0	—	100.0
1925–26...	69.7	30.3	100.0	—	45.2	54.8
1926–27...	68.5	31.5	100.0	—	42.4	57.6
1927–28...	69.9	30.1	100.0	—	43.3	56.7
1928–29...	70.4	29.6	100.0	—	45.3	54.7
1929–30...	70.2	29.8	100.0	—	44.1	55.9
1930–31...	67.0	33.0	100.0	—	40.6	59.4
1931–32...	65.8	34.2	100.0	—	35.1	64.9
1932–33...	65.7	34.3	100.0	—	31.9	68.1
1933–34...	64.9	35.1	100.0	—	34.1	65.9

[a] Compiled from *Statistisches Jahrbuch für das Deutsche Reich.*

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Reich-administered taxes accounted for about two thirds of all tax income during this period, and approximately two fifths of state and local tax income; but the proportion of state and local tax income from this source declined from 45 per cent in the peak year, 1928-29, to 32 per cent in 1932-33.[5]

The fundamental difficulty was that experienced everywhere during depression—decreasing tax yields accompanied by increasing public assistance burdens. National, state and local taxes combined produced 28 per cent less in 1932-33 than in 1929-30. Public assistance burdens, already high in 1928-29, were 50 per cent greater in 1931-32. In both this and the following year public assistance expenditures took one third of all tax income. This would have been serious enough if there had been a single budget for the entire Reich. Unfortunately there were several layers of government and more than sixty thousand budgets, and the brunt of the public assistance burden fell on the local governments, which had less power to adapt revenues to expenditures than any other governmental authorities. More than two thirds of the public assistance expenditures were incurred by local governments in 1931-32. Most of the remainder was the national government's contribution to social insurance. In some parts of the country, and for some forms of relief, the area of administration was wider than the commune, but the commune itself was ordinarily responsible.

Municipalities in other countries faced with exceptional public assistance burdens have turned to the central government for help, and it was to be expected that the German communes would do the same. The average commune is extremely small and the public assistance burden has been exceptionally large. This is a situation which cannot be met by the distribution of fixed proportions of centrally administered taxes in proportion to yield. Local needs rise faster than national needs in time of depression, as long as the public assistance costs are largely in local hands. This particular problem might be solved by increasing the proportion of the yield redistributed, but there is a more serious difficulty. The jurisdic-

[5] See Table 2.

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tions with the largest relief burdens are inevitably those with the smallest resources, and the return of taxes where collected gives the least to the neediest. This difficulty can be overcome only by distributing revenue in accordance with need. In short, the sharing of specific tax yields breaks down in an emergency. The fiction can be maintained, but if the amounts finally received by individual local governments vary neither with the total yield of the tax nor with the yield in specific localities, the peculiar virtues of the shared tax disappear. Whatever the disguise, the central government is, in fact, distributing grants in aid.

The weakest spots in the Reich's system of sharing taxes were the variability of the taxes selected for distribution and the absence of any important equalizing factor. The decline in the state and local tax income from Reich taxes between 1928-29 and 1932-33 was not caused by any change in the proportion of the taxes allocated to the underlying governments; and while the merger tax had been abandoned in the interval, this was more than compensated for by the distribution of one sixth of the beer tax in addition to the special beer tax indemnities paid throughout to the southern states. It is apparent that the nature, as well as the proportion, of the taxes distributed, is of concern to the recipients. The most productive of the shared taxes were the income and corporation and the turnover taxes. Of these, three fourths of the income and corporation taxes, which were by far the most variable, went to state and local governments, while the largest part of the steadier turnover tax was retained by the Reich. The income and corporation taxes alone supplied four fifths of the state and local share in national taxes in 1928-29.

The selection of the income tax for the bulk of the state and local share was natural, in view of the fact that it had been the backbone of state and local tax systems before the war. At first the subordinate governments profited by the choice, but such great dependence on so variable a source has placed their finances in a hazardous position. Under the old system adjustments could be made. Local surtaxes might be increased in time of need, and the power to develop other sources of revenue

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was not so narrowly circumscribed. Under the new system state and local governments alike are at the mercy of shifting economic forces and the will of a superior government. Concessions have been made from time to time, but the Reich, too, has been hard pressed, and on the whole the subordinate governments have had the worst end of the bargain.

The Reich's own share in the taxes distributed increased from 37 to 49 per cent of the whole between 1928-29 and 1932-33.[6] This was largely, but not entirely, the result of having less variable taxes. It will be noted that the Reich's share in the income and corporation taxes had increased from one fourth to one third in these four years. This is excluding the "crisis tax" which was levied as a temporary addition to the income tax, from 1931 to 1935. If this is included in the income tax the Reich's share in income and corporation taxes was close to two fifths of the whole (38.4 per cent) in 1932-33. No change had been made in the basic proportion of the income and corporation taxes allotted to state and local governments, but deductions had been made for the estimated savings from the reduction of salaries of state and local officials, which was required by national decree, and state and local governments were not permitted to share in any of the various surtaxes on income levied during this period.

The amount of Reich taxes distributed to state and local governments decreased seriously, but it was still a substantial sum, and if it had been distributed in proportion to need the subordinate governments would not have fared so badly. Germany has been confronted with the need of equalization to an unusual degree. There have always been great inequality in the size and resources of the states, and a lack of unity which was further aggravated by the Versailles Treaty. Prussia has more than three fifths and Schaumburg-Lippe less than one one-thousandth part of the area, population and wealth of the country. More than this, the area of a state is not always continuous. Prussia is divided by the Polish Corridor. Oldenburg is in three widely separated parts. And a number of

[6] See Table 3. This percentage dropped to 46 in 1933–34.

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TABLE 3

TAXES SHARED BY REICH, STATE AND LOCAL GOVERNMENTS, 1928–1929 AND 1932–33[a]

Tax	1928–29					1932–33				
	Total	Reich	State	Local	Hanseatic Cities	Total	Reich	State	Local	Hanseatic Cities
	Million Rm.									
Income and corporation[c]	3,722	912	1,369	1,281	161	1,438	465	510	408	55
Turnover	1,002	700	151	142	9	1,354	948	200	193	13
Land purchase	119	1	16	98	4	19	1	8	9	1
Beer	397	338	59	—	—	261	173	75	12	1
Motor vehicle	177	7	44	123	3	172	7	38	124	3
Betting	32	1	29	—	2	23	1	20	—	2
Merger	69	63	—	6	[b]	16	14	—	2	—
Mineral water	—	—	—	—	—	[b]	—	[b]	[b]	—
Total	5,519	2,022	1,667	1,650	180	3,284	1,609	851	749	75
	Percentage									
Income and corporation[c]	100.0	24.5	36.8	34.4	4.3	100.0	32.3	35.5	28.4	3.8
Turnover	100.0	70.0	15.0	14.1	.9	100.0	70.0	14.8	14.3	.9
Land purchase	100.0	1.3	13.1	82.4	3.2	100.0	3.7	42.8	48.1	5.4
Beer	100.0	85.1	14.9	—	—	100.0	66.2	28.8	4.6	.4
Motor vehicle	100.0	4.1	24.9	69.2	1.8	100.0	4.6	22.1	72.2	1.2
Betting	100.0	4.0	89.5	—	6.5	100.0	4.0	87.3	—	8.7
Merger	100.0	90.6	—	8.9	.5	100.0	88.7	—	11.3	—
Mineral water	—	—	—	—	—	100.0	—	—	100.0	—
Total	100.0	36.6	30.2	29.9	3.3	100.0	49.0	25.9	22.8	2.3

[a] Compiled from data in Statistisches Reichsamt, *Einzelschrift, no. 20* and *Statistisches Jahrbuch.*

[b] Less than half a million Rm.

[c] Not including the crisis tax.

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states possess enclaves, territories completely surrounded by another state. Also, the layers of government are many, as is to be expected with a federal government, and the ultimate commune extremely small.[7] These communes have been responsible for a large part of highway costs, as well as most of the public assistance costs, and have shared with the state governments the support of schools and police. They were still incurring one third of national, state and local expenditures in 1931-32 in spite of the growing tendency to transfer functions to the larger local jurisdictions, particularly in rural areas.

It was out of the question for the communes in the post-war period to meet the cost of all the functions which they had supported in the pre-war period without some equalization of income and costs. Equalization has been achieved in many ways. Consolidation of communes to form larger units and the transfer of functions to a larger jurisdiction, such as the circle, have taken place to some extent. There has been a marked tendency to transfer public assistance costs, for instance, from the commune to the circle. Equalizing grants from the state or some superior local authority are also common. Many of these are restricted to needy districts, the determination of need being left to administrative discretion. The Reich itself, however, has contributed very little to this equalization. More than four fifths of the money paid by the Reich to state and local governments in 1928-29 was returned where collected, and the other bases of distribution for Reich taxes afford only a moderate degree of equalization.[8] Nor are the grants in aid better, except for the emergency relief grant. The police subvention accounted for more than two thirds of the whole in

[7] The average area of the Prussian commune is between two and three square miles and the average population approximately 900. Rural communes, outside of cities of 5,000 population and more, have an average population of about 400. In contrast, the average area of the New York rural town, which is generally considered to be too small for efficient administration, is 51 square miles and the average population is 2,600. In Bavaria, the average area of the commune is somewhat greater than in Prussia, but the average population is no larger. In Saxony the average area is smaller and the average population greater.

[8] See Table 4.

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1928-29 and this is paid in proportion to expenditures, with the aim of encouraging state expenditures in this field.

TABLE 4

PROPORTION OF STATE AND LOCAL REVENUES FROM REICH TAXES AND GRANTS IN AID

Fiscal year	Total State and local revenue from taxes and grants	State and local revenue from Reich taxes and grants	Amount from specific taxes			Grants in aid [d]
			Returned where collected [a]	Redistributed [b]	For guarantees [c]	
	Million Rm.					
1925–26...	6,096	2,890	2,274	321	45	250
1926–27...	6,662	2,994	2,239	265	194	296
1927–28...	7,420	3,343	2,785	310	16	232
1928–29...	8,006	3,775	3,130	349	18	278
1929–30...	7,893	3,624	2,955	374	40	255
1930–31...	7,797	3,343	2,630	382	38	293
1931–32...	7,028	2,863	1,888	343	17	615
1932–33...	6,234	2,675	1,232	408	25	1,010
1933–34 [e]...	6,367	2,632	1,297	451	20	864
	Percentages					
1925–26...	100.0	47.4	37.3	5.3	.7	4.1
1926–27...	100.0	44.9	33.6	4.0	2.9	4.4
1927–28...	100.0	45.1	37.5	4.2	.2	3.1
1928–29...	100.0	47.2	39.1	4.4	.2	3.5
1929–30...	100.0	45.9	37.4	4.7	.5	3.2
1930–31...	100.0	42.9	33.7	4.9	.5	3.7
1931–32...	100.0	40.7	26.9	4.9	.2	8.7
1932–33...	100.0	42.9	19.8	6.5	.4	16.2
1933–34...	100.0	41.4	20.4	7.1	.3	13.6

[a] All of income and corporation taxes after deducting guarantees; one third of turnover tax; all of land purchase tax and beer tax; one third of mineral water tax; one half of betting tax; one fourth of motor vehicle tax beginning in 1926–27.

[b] Two thirds of turnover tax; all of motor vehicle tax in 1925–26 and three fourths beginning 1926–27; all of merger tax; one half of betting tax; two thirds of mineral water tax.

[c] Includes 37 million Rm. turnover tax guarantee for 1925–26 and 187 million Rm. for 1926–27. The remainder is for the per capita guarantee which comes from the Reich share of the income and corporation taxes.

[d] Prior to 1931 most of this was for police subventions. In 1931 and 1932 this includes public assistance subventions of 234 and 705 million Rm. for the unemployed supported by the communes. The police subvention is distributed in proportion to expenditures. The subvention for the unemployed is distributed on the basis of population weighted for the size of the commune and the percentage of unemployed. Indemnities for the reduction of real estate and beer taxes are also included in this item from 1930 on.

[e] The Reich tax distributions for 1933–34 in this table differ from those given in Table 2 because these are the amounts actually paid to state and local governments in this year, whereas those in Table 2 are the amounts earmarked.

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The situation which Germany faced with depression could not be met by such half-hearted measures. Nothing short of pooling all resources for the common good could really cope with the situation. The Reich first assumed three fourths of the cost of emergency relief, which was essentially an extension of unemployment insurance benefits beyond the period that these were payable. This kept the unemployed off local relief rolls for a longer period. It next loaned the unemployment insurance administration sums sufficient to cover mounting deficits and later cancelled the loans. This, too, prevented the unemployed from falling on local relief as soon as they otherwise would have. Finally it introduced grants in aid, paid directly to local districts in proportion to unemployment. None of these changes disturbed the arrangements for shared taxes. Some of the cost of these measures came from the various surtaxes on incomes which were not shared with state and local governments, but the original tax was shared as before. One sixth of the beer tax, after the indemnities to the southern states were paid, and for a short period a mineral water tax, were added to the shared taxes to aid state and local governments; but these were returned in proportion to collections, excepting part of the mineral water tax, which was distributed per capita, so that the neediest districts were not materially relieved. Administrative officials have, however, availed themselves of an extra-legal device for equalizing tax distributions which has apparently been beneficial. In returning income and corporation taxes to the state of origin the Reich assigns them, not merely to the state, but to the commune of origin. There is inevitably delay in determining this. The original intention was to use the same base for two successive years, but the standard set in 1931 on the basis of 1929 income has continued in use for four years, not because there has not been time to establish a new base, but because the old base happens to be better adapted to current needs. The year 1929, being one of comparative prosperity, favors the highly industrialized states, such as Hamburg and Saxony, which have suffered most from the depression, and consequently are at present in greatest need. And Württemberg, which has suffered least from de-

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pression, and which has everything to gain from a revised standard, protests in vain. There can be no doubt as to the wisdom of this opportunist measure, but nothing could more clearly condemn the nominal basis of distribution.

The various public assistance aids given by the Reich have been an important equalizing factor, but they have not been regarded as permanent. The Reich has not accepted equalization of resources as a normal obligation. The necessity for wider areas of charge is recognized, but public assistance is regarded as a local function, to be returned to local hands, except for social insurance, as rapidly as circumstances permit. In so far as taxes are returned on a per capita basis, they are returned as a sop to the poorer states rather than as a manifestation of an accepted principle. Even this concession brings only moderate equalization. The real responsibility for adjusting resources to needs has been left to the states.

The history of the German states during the fifteen years following the Weimar Constitution is one of continuous struggle with the central government for power; a struggle in which the states steadily lost to the Reich and were ultimately reduced to mere administrative units. Nevertheless, in the short time and with the limited powers allotted to them, some of the states, and notably Prussia, constructed systems for the redistribution of tax revenues which are of more interest as experiments in equalization than the system of the Reich itself.

During the first five years, 1919 to 1924, the states retained a considerable degree of nominal financial independence in spite of the centralization of important taxes in the hands of the Reich. Actually they became wholly dependent on the Reich, owing to the inflation. During the second five years, 1924 to 1929, the Reich was drawing the net of financial control more closely around them, but rising tax yields left them with very genuine freedom in expenditures, and in the utilization of those revenue sources still at their disposal. The taxes on land and buildings, business and rentals were, after all, no mean sources of revenue in a period of comparative prosperity, and Reich tax distributions were unexpectedly large. The third period, 1929 to 1934, brought rapid decline in the financial

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freedom of the states. The business depression reduced the yield of available state sources on the one hand, and it stimulated the process of centralization on the other. Between the two, the states were rapidly reduced to subordinate administrative districts of the Reich, and the final *Gleichschaltung* of 1933 and 1934 was little more than formal recognition of an accomplished fact.

The manner in which both the Reich and the state and local taxes are shared in the different states varies materially. In the case of the land, building and business taxes, local authorities in some states share the state levy. In other states they have the privilege of levying a limited surtax on the state base, and in still other states they may levy independent taxes. Two states give local governments the option of levying a surtax or an independent tax. The division of the rental tax, which is the one other important state and local tax, varies in much the same way. Those states delegating the most functions to local units are Prussia and Oldenburg—Prussia because of its size and Oldenburg, doubtless, because of the lack of geographic unity. These same two states give local districts more freedom in tax levies and also are more generous in sharing Reich taxes than are other states.

A comparison of the proportions of expenditures and of Reich taxes falling to the lot of local governments shows, however, that the percentage of taxes is never as great as the percentage of expenditures.[9] Nor is this compensated for by grants in aid since these are credited to state expenditure. This suggests that the states have balanced their own budgets first and left the local authorities to manage as best they can. This is not necessarily unreasonable. Local governments have sources not available to the states in the form of the citizen tax (*Bürgersteuer*) and local taxes on amusements and retail drinks. There are no state taxes of corresponding importance which are not shared with local governments. Moreover it is more appropriate for the states to take the larger share of the income tax and leave the real estate and business taxes in

[9] See Table 5.

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largest part to local governments, since local expenditures are apt to confer more direct benefits on real estate owners and business concerns than state expenditures. Nevertheless it seems probable that the states have to some extent taken advantage of their authority. The changes occurring between 1928, the year of greatest tax yields, and 1931, when the effects of the depression are evident, demonstrate this. In all but two of the fourteen states the percentage of state and local expenditures met by the state government was less in 1931 than in

TABLE 5

PROPORTION OF STATE AND LOCAL EXPENDITURES INCURRED BY LOCAL GOVERNMENTS COMPARED WITH PROPORTION OF REICH TAXES AND STATE RENTAL TAX REDISTRIBUTED TO LOCAL GOVERNMENTS, 1931–32 [a]

State	Percentage of expenditures incurred by local governments [b]	Percentage of Reich and state rental taxes returned to local governments	Percentage of Reich taxes returned to local governments [c]	Percentage of Reich taxes returned to locality of origin [d]
Prussia	69.1	51.9	53.8	40.4
Bavaria	48.9	25.1	28.4	55.9
Saxony	57.7	45.1	51.8	45.0
Württemberg	57.5	32.9	35.3	49.1
Baden	59.5	39.9	30.4	30.7
Thuringia	48.6	32.5	35.0	7.4
Hesse	57.4	38.7	38.9	31.0
Mecklenburg-Schwerin	45.7	34.9	24.4	—
Oldenburg	63.5	53.8	55.0	47.3
Brunswick	48.7	34.9	38.9	84.1
Anhalt	54.1	40.0	43.8	56.6
Lippe	46.2	35.0	40.4	36.8
Mecklenburg-Strelitz	34.2	32.5	23.9	86.7
Schaumburg-Lippe	58.0	29.2	27.6	55.0
Total	63.8	45.8	47.4	40.9

[a] Computed from data in *Statistik des Deutschen Reiches*, Bd. 440 (1934).

[b] The expenditures for which these percentages have been computed are the *Zuschussbedarf*, that part of expenditures not covered by special income, such as grants in aid or fees.

[c] Includes equalization funds in so far as these are specifically from Reich taxes. It is not always possible to determine the exact amount of equalization funds obtained from Reich taxes, but since these funds are largely from this source it is believed that a more accurate picture of these tax distributions can be obtained by including these funds even though the estimate introduces a small margin of error.

[d] This is the percentage of the local share, after the state share has been deducted.

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1928. This is perhaps to be expected, since the important increases in costs were for public assistance, an essentially local function. But instead of helping local governments to meet this new burden, the majority of states, themselves in need of revenue, retained an even larger percentage of the declining Reich tax distributions for their own use. Only three states

TABLE 6

PERCENTAGE OF REICH AND STATE TAXES DISTRIBUTED BY STATE TO LOCAL GOVERNMENTS, 1931–32 [a]

	Income and Corporation	Turnover	Land purchase	Motor vehicle	Mineral water	Beer	Rentals
Prussia	52	55	100	100	100	50	57
Bavaria	39	50	50	45	100	—	18 [b]
Saxony	53	55	100	50	100	—	— [c]
Württemberg	33	60	50	—	100	60 [d]	— [j]
Baden	35	35	50	—	100	—	64
Thuringia	45	60	50	—	100	—	50
Hesse	35	50	50	100	100	—	— [j]
Mecklenburg-Schwerin	20–40	17	50	[e]	100	—	[f]
Oldenburg	57	60	50	100 [g]	100	—	—[e]
Brunswick	37	50	50	50	100	—	2½–7½ [h]
Anhalt	40	50	50	100	67 [k]	67	50
Lippe	40	50	50	40	100	—	57
Mecklenburg-Strelitz	33	25	50	—	100	—	56
Schaumburg-Lippe	45	8	50	50	100	—	53
Hamburg	50–75	50–75	50–75	—	100	—	[i]
Bremen	50	50	50	[e]	100	—	100
Lübeck	27	100	—	—	100	—	[e]

[a] In the case of Reich taxes the percentage is that proportion of the sum received by the state from the Reich.

[b] Approximately. This percentage varies slightly.

[c] Local governments have surtax privilege, however. State share for housing 100 per cent to communes and districts.

[d] Not including special indemnity.

[e] No fixed percentage.

[f] Varies in different cities.

[g] In Lübeck and Birkenfeld districts. In Oldenburg district 50%.

[h] 7½ in cities, 2½ in rural communes.

[i] Varies with different taxes.

[j] Independent local tax.

[k] The state met the Reich requirement that the entire proceeds of the mineral water tax should go to local governments by pooling mineral water and beer tax yields and distributing two thirds of the proceeds, this sum being greater than the entire yield of the mineral water tax.

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returned a larger proportion of these Reich taxes in 1931 than in 1928, and in none of these three was the increase in proportion to the increase in local expenditures. Only in Saxony and Mecklenburg-Strelitz, where the proportion of expenditures assumed by the state was greater in 1931 than in 1928, would the state government seem to have assumed its share of growing burdens. In nine states the local governments were left with a larger share of the burden and a smaller share of Reich tax revenues.

The states have made more effort to equalize resources, however, than the Reich has. This is apparent from the summary given in Table 7. The real complexities of these state and local systems of sharing can only be suggested in such a summary, but at least it is apparent that the bases are many and diverse. Origin plays a much smaller part in these distributions than in the Reich distributions. A certain amount of equalization is imperative and the states have undertaken what the Reich has left undone. Specific equalization funds, derived from these taxes, are to be found in all the states excepting two of the city-states, Hamburg and Lübeck; and needs are measured by population, simple or weighted, school children, unemployed, highway mileage, area, and actual expenditures for specific functions. Even when fixed proportions of the state receipts are paid out to specific local units the determination of these proportions has been influenced by various tests of need. It is unfortunate that the equalizing factors adopted have been vitiated in a number of instances by guarantees of pre-war income.

Efforts to equalize resources have not been limited to tax distributions. State grants in aid covered about five per cent of local expenditures in 1931-32. The largest part of these was for schools, although there is no important local function which does not receive a grant in some state. The amount of money involved is small, compared with the distributions of specific taxes, but the amount of equalization achieved is substantial. The practice of meeting a fixed percentage of local expenditures for given functions which has characterized the English grant system for the past century has never

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TABLE 7

BASIS OF DISTRIBUTION OF REICH AND STATE TAXES TO LOCAL GOVERNMENTS, 1931–32 [a]

State	Income and corporation	Turnover	Land purchase	Motor vehicle	Mineral water	Beer	Rentals
Prussia	O, P, R, E, W, X	W	O	F	I	I	O, P, U
Bavaria	O, P, R, E	P, E	O	E	U	—	O
Saxony	O, P, E, X	P, I	O	R, E	E	—	O, E
Württemberg	O, P, E, S	P	O	—	P, R	P, R	—
Baden	O, P, R, E	I	O	—	P	—	O
Thuringia	O, P, E, W, X	W, I	O	—	E	—	O
Hesse	O, R, E	I	O	O, P, H	E	—	—
Mecklenburg-Schwerin	R, X	P	P	H	E, U	—	O
Oldenburg	O, P, E	P, I	O	O, H	P	—	—
Brunswick	O, P, X	W	O	H	E, I	—	O, E
Anhalt	O, P, E	P	P	E	E, F	E, F	O
Lippe	O, R, E, S	P, I	O	P, H	P	—	O, E
Mecklenburg-Strelitz	O, R	P, E	O	—	—	—	O
Schaumburg-Lippe	O, E, F, X	F	O	F	X	—	O, P
Hamburg	O, P	P	O	—	—	—	O
Bremen	O, E	P	O	A	O	—	O
Lübeck	O	P	—	—	—	—	—

[a] The different bases are indicated as follows:

A Area
E Equalization funds distributed according to need
F Fixed proportion
H Highway mileage
I Distribution of income and corporation tax
O Origin
P Unweighted population
R Former revenues
S School children
U Unemployed
W Weighted population
X Expenditure for specific purpose

gained any real foothold in the German states. German municipalities are expected to maintain state standards without being bribed to do so. There is an element of compulsion not to be found in the relations of the central and local governments in England. Even before the war grants in aid for various functions were for the most part distributed on some basis of need, and often the amount received by the different jurisdictions was determined by proved need. It was necessary for local officials to convince the state administrative authorities of their inability to meet essential costs.

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The pre-war grants have given way in part to shares in specific Reich taxes earmarked for definite functions and distributed on bases similar to the old grants. This is particularly true of school and highway aid. In the case of public assistance the intervention of the Reich has tended to relieve the states of responsibility. In spite of these changes, the grant in aid from general revenues remains an appreciable equalizing factor.

The ultimate test of the merits of the Reich and state systems of distribution would seem to be their adaptability to the needs of the bottom layer of government. Here they have failed. The communes have been placed in a financial strait-jacket. All possibilities of adapting revenues to changing needs rest on the charity of superior governments. In spite of all the measures taken by both the Reich and the states to aid local governments their position has been all but intolerable. As the residual claimants, after Reich and state demands have been met, they were bound to lose.

To cite specific examples of the inequalities of the present system, in 1932-33 the yield of the income tax per capita in Stuttgart was three times the yield of the income tax in Herne. The proportion of the population receiving relief in Stuttgart was only about half of the proportion receiving relief in Herne. To have returned the income tax in proportion to yield would have given Stuttgart three times as much per capita when it had half the welfare burden. Enough of the Reich taxes had been redistributed on other bases, however, so that Stuttgart received 13 marks per capita as compared with Herne's 9 marks. Even so, the city with the greatest need was obtaining least. Fortunately Reich aid did not stop at this point. The Reich grant for public assistance brought the per capita public assistance expenditure from local sources in Herne below that in Stuttgart. This factor is, however, temporary. It is difficult to compare the local tax burdens in the two cities because, being in different states, the form of the local taxes is quite different. Per capita local taxes in Herne are just 60 per cent of such taxes in Stuttgart, but if the per capita ability to pay taxes varies as much as the income tax yields suggest, the burden in Herne is materially greater. In any case the tax

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rates for land, building and business taxes in Herne are among the highest in Prussia.

Comparing two Prussian cities of similar size, the per capita yield of the income tax in Frankfurt am Main in 1932-33 was about double that in Breslau. Reich tax distributions were 8 marks in Frankfurt and 9 marks in Breslau. The proportion of the population on relief was 50 per cent greater in Breslau than in Frankfurt. Again the Reich grant in aid for public assistance brought substantial relief to the poorer city, and the per capita public assistance burden in Breslau which had to be met from local resources was about two thirds that in Frankfurt. Breslau was further helped by the special Reich aid for the reduction of the business tax in East Prussia, with the result that the rate of the local surtax was 459 per cent as compared with one of 540 per cent in Frankfurt. In spite of this the local tax burden per capita was not much less in Breslau than in Frankfurt, being 64 marks as compared with 69 marks, and the local surtax on land was 500 per cent in Breslau, whereas that in Frankfurt was 265 per cent. These illustrations are perhaps sufficient to indicate the inequalities remaining.

When shrinking Reich tax distributions and rising public assistance costs left local governments with unbalanced budgets they attempted to fill the gap by increasing the rates of the land, building and business taxes. These taxes became so high that the Reich interfered in 1931, demanding that local governments apply half of the proceeds of the rental tax to the reduction of the other taxes. Other restrictions followed, and while local authorities were partially reimbursed by the Reich, they were expected to meet deficits, for the most part, from the new citizen tax, a capitation tax roughly graded according to income, and from increases in beer taxes which the Reich authorized. But all local resources combined were not equal to the burden placed upon them. Relieving the strain at one point only increased it at another. The Reich was forced to reduce both the rental tax and the beer tax in 1932 and to meet local deficits to some extent through increased public assistance grants. The moment conditions began to improve, however, in 1933-34, these public assistance grants were cut, so that what

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the local governments gained in increased Reich tax distributions they lost in decreased Reich subventions, and the new régime demanded expansion of local work relief projects, thus adding further to mounting deficits. Under these conditions it was inevitable that the much disliked citizen tax, intended as a very temporary stop-gap, should be continued, and that the long overdue reduction of the rentals tax should again be postponed.[10]

The states were not in a position to offer substantial aid, even when willing to do so. In Prussia the manner in which the Reich distributes taxes is almost a matter of indifference. Constituting three fifths of the Reich, and containing a wide diversity of industrial conditions, she stands to gain or lose little whether taxes are returned where collected, or on some equalizing base; and there is still ample opportunity for equalization among communes after the Reich distribution has been made. But wealthy city-states such as Hamburg and Bremen, and poor and tiny states like Lippe and Schaumburg-Lippe, are vitally concerned with the first distribution. Even if the states were not being shorn of power, and were not ultimately to be dissolved, the responsibility for providing local governments with adequate income would still lie with the Reich.

The Third Reich is a highly centralized state which leaves no place for the dual authority of federalism. It is the well-advertised intention of this government not only to reduce the former states to mere administrative units, but to revise the geographic area until the different jurisdictions (*Gauer*) are of approximately equal size. A well-considered reorganization of territory should simplify the problem of matching resources to needs. The new districts might take over functions now vested in local authorities, thus widening the area of charge, or they could be given the major responsibility of equalizing resources among local districts. Actually, however, the proposed reorganization of the states has been de-

[10] This tax was imposed following depression primarily for housing. It was designed to reach the owners of real estate who had profited by inflation, and there was no thought of continuing it for any length of time. Today it is an anachronism, but its large yields make it indispensable.

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layed, partly, if not principally, because the particular distribution of territory proposed left some divisions too poor to support themselves. The existing states have developed, by trial and error over a period of years, a system that "works" in spite of all defects. And the Reich is not eager to shoulder further burdens. The states have been abolished in name. In fact many of the former state officials are administering much of the former state law as though the state still had its former powers. The diverse state tax systems remain practically unchanged, and will unquestionably be continued until such time as another workable system can be found.

The Weimar Constitution looked toward a uniform and unified tax system, and the present government has definite plans to that end. The increasing importance of uniform taxes is recognized in all countries. They are a necessary concomitant of increasing tax rates and the extension of the activities of single business units over ever wider areas. The need for uniform taxes has been particularly acute in Germany because of the exceptionally heavy tax burden and the lack of economic unity among the states. Complete uniformity has been achieved, through Reich administration, for the personal and corporation income taxes, the inheritance tax, the property tax and the turnover tax, and a number of specific taxes on articles of consumption. Real estate, business and rentals taxes, however, vary in form as well as in rates in the different states, and the land purchase tax and the citizen tax vary in rates. The rates of all these state and local taxes vary, of course, not only with the state but with the individual commune.

There is every expectation of adopting a thoroughly coördinated and uniform tax system for the entire Reich. The *Reichbewertungsgesetze* of 1925 and 1934 and the *Steueranpassungsgesetz* of 1934 are important steps to this end. The variations which now obtain in the different states will disappear; the form of all local taxes will be determined by Reich legislation; and the valuations for tax levies will be provided by the central government. Valuations have already been made, but the difficulties in adopting them as tax bases in a period of sharply declining values have postponed their use for

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state and local taxes. The only discretion left to local authorities will be as to the rates levied. Even here there will be limitations. The rate of a particular local tax may not be revised beyond certain limits without corresponding changes in other local taxes. Thus the Reich will, in effect, determine the proportion of the local tax burden to be placed on real estate, business and other local tax bases. The general level of local taxes may vary from one commune to the next but it will not be possible for one commune to place the bulk of the burden on business and another to place it on land. Just what taxes will be subject to these varying local rates is still a matter of debate. The land, building and business taxes will almost certainly be included. Local authorities are eager, also, for the restoration of the local surtax on income and this has long been promised, but for the immediate future, at least, it is out of the question, and the day has probably passed when local authorities can use such a tax as the mainstay of local budgets.

The achievement of a uniform tax system is highly desirable and perhaps inevitable, but a uniform tax system brings problems of its own. Such a system can not be adapted to peculiar local needs, and if any measure of local autonomy is to be preserved it is necessary to distribute substantial sums of money in such a way as to meet local needs, and provide some degree of local freedom, without at the same time destroying local responsibility.

The transformation of the German government from a federal to a unitary state requires a realignment of functions, and it is not yet clear just what will be left in local hands. Recent legislation indicates that police, main highways and education will be increasingly controlled, and probably supported by the central government. Local roads, water, light and power systems, and such local institutions as markets and theatres will doubtless be left to local control. And public assistance, in spite of substantial Reich support in recent years, is still regarded as a local function. Though these are recognizable trends the government has gone much farther in reorganizing its tax system than in reorganizing its governmental administration as a whole. Overlapping of administration is

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particularly serious in public assistance; and it is far from clear whether local initiative is to be preserved in education, as Popitz urges,[11] or whether, in the interests of equal opportunity and political unity, a dead level of education is to be provided throughout the Reich.

The "final" division of revenues which the local authorities so urgently desire must follow the apportionment of functions, and the present plans for such redistributions will probably be materially modified in the end. Nevertheless, they are interesting as indicating possible future developments. The present system is the product of a succession of emergencies and is frankly regarded as temporary. Popitz' plan is the most generally accepted, in view of his exhaustive study of the problem and his position as Prussian finance minister. No important redistribution of functions is contemplated in this plan. About two thirds of local expenditures are to be met from local taxes and surpluses from local industries. The remaining third is to come from Reich subventions for police and schools, and Reich taxes distributed according to need. Local surtaxes on income would not be permitted, nor would the return of taxes to the locality of origin play any important part in the system. Subventions and tax distributions would, on the basis of 1929 data, come to about equal amounts, but the total amount of the subventions would vary with need, and the total amount of the tax distributions would vary with tax yields. In consequence, this proportion would change materially from year to year. Equalization is to be achieved through both the subventions and the tax distributions. The tax distribution has the advantage, as compared with the ordinary subvention, of rising and falling with total tax income. In this way the local governments share with the central government the changing fortunes of the business cycle, and the central government is not forced to make all the adjustments, but no allowance is made for changing needs. The use of tax distributions and subventions in approximately equal proportions is, perhaps, a happy compromise.

[11] J. Popitz, *Der künftige Finanzausgleich zwischen Reich, Ländern und Gemeinden*, 1932, p. 225.

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Popitz would attain further equalization of resources by widening the area of charge in rural areas. The local rural unit of government would be enlarged, even beyond the size of the present circle.[12]

Another important plan based on a detailed study of the effects of various systems of distribution in specific communes is that published in a memorandum to the Prussian *Landtag* in 1929.[13] While designed for Prussia it is equally applicable to the entire Reich. This, too, contemplates extensive equalization through special police and school subventions, special equalization for poor districts, and per capita distributions of the residual revenues, population being weighted for the size of the commune, the proportion of school children in the population, and possibly the rate of growth of the commune. The possibility of local surtaxes on the income tax is not considered since the plan is designed for the state and not for the Reich, but the absence of any provision for the return of revenues where collected, in spite of the fact that the amount of the contemplated tax redistributions is very large, suggests that equalization is regarded as the more essential, and perhaps the only factor.

There are many other plans, varying widely in important features. A number of these provide for the restoration of local surtaxes on income, and the local governments themselves are eager for such a solution. Even when this change is anticipated, however, there is the expectation that local governments would still be heavily subsidized by the central government; and while the plans differ in the extent to which they would use subventions or tax distributions, they are in substantial agreement that such revenues as are provided by the central government should be distributed in accordance with some measure of need. The original distribution of Reich taxes was not for the purpose of equalizing resources. On the contrary every effort was made to maintain the pre-war financial position of the subordinate governments in so far as

[12] J. Popitz, *op. cit.*, ch. 5.

[13] *Denkschrift no. 2275*, Preussischer Landtag, 3 wahlp. 1 Tg. 1928–29.

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this was compatible with uniform Reich taxes controlled entirely by the central government. Nevertheless the return of centrally administered taxes to the community of origin plays no important part in the plans for the ultimate coördination of the central and local systems.

The final solution will doubtless offer some compromise between complete separation of central and local revenue sources and complete centralization of all sources. Genuine local self-government can be realized at neither extreme. Local self-support from independent tax levies leaves a large proportion of the communes too poor to exercise local initiative, and complete dependence on the central government tends inevitably toward central control of all governmental functions. Whether in the ultimate adjustment the government will swing toward the greater equalization provided in the Popitz plan or the greater nominal freedom of the local surtax on income is uncertain. But if public assistance continues to be primarily a local function it is safe to guess that a very substantial degree of equalization will, perforce, take place. Present indications are that the distribution of specific taxes on some basis of need, the distribution of grants in aid, and the organization of larger local units will all play a part in this; but the relative importance of each is not clear. There are, however, indications that the grant in aid will replace the tax distributions at least in part. The attempt to restore to the communes the revenues collected within their jurisdiction from a uniform Reich tax is certainly doomed to failure. No faction is urging it for any important tax distributions, and it has not even the virtue of simplicity to recommend it. In so far as local governments are permitted to reap the benefit of their own unusual tax resources it will be on their own responsibility.

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THE MAINTENANCE OF MIGRANTS' PENSION RIGHTS CONVENTION, 1935

THE Maintenance of Migrants' Pension Rights Convention, 1935,[1] which was adopted by the International Labor Conference at its Nineteenth Session, held in Geneva in June 1935, may fairly be regarded as one of the most important achievements not only of that session but of the entire history of the International Labor Organization. The Convention should be of special interest in the United States now that the adoption of the Social Security Act, 1935, (Public No. 271—74th Congress) has opened up a new epoch in the history of social insurance in the United States, and even if future developments should not be such as to make it possible for the United States to become a party to the Convention it should present analogies of great interest to those concerned with the coördination of state insurance schemes. Apart from this the Convention is of greater interest to international lawyers than any other labor convention hitherto adopted, for two reasons. In the first place, unlike the majority of International Labor Conventions, the object of which is to make certain general standards of industrial regulation matters of international obligation, the object of this Convention is to create rights on behalf of individuals who in the course of their industrial careers are insured in more than one country, and for this purpose to regulate certain relationships (a) between such individuals and the insurance institutions to which they are

[1] For text of Convention see *Official Bulletin* of I. L. O., XX: 3, pp. 74-83. For preparatory work see International Labor Conference, 18th Session, Geneva, 1934, Report IV, and *Record of Proceedings*, pp. 430-450, 612-638; International Labor Conference, 19th Session, Geneva, 1935, *Questionnaire* 1, *Report* 1, and *Provisional Record* Nos. 21, 26, 27 and 30, also *Record of Proceedings*, pp. 553-573, 615, 769-792. The Minutes of the Maintenance of Pension Rights Committees of the 18th and 19th sessions of the Conference are not published but are available in the archives of the International Labor Office.

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successively affiliated, and (b) among such insurance institutions in respect of their dealings with such individuals. Secondly, incidentally to the regulation of these relationships it was necessary to consider a group of questions, not adequately dealt with for the purpose of a convention of this character in the standard articles customarily inserted in International Labor Conventions, which have a certain general importance in relation to the future development of international legislative technique. These questions were (a) the extent to which particular pairs or groups of members should be allowed to contract out from the Convention in respect of their mutual relationships by bilateral or plurilateral agreement, (b) the method to be adopted for securing coördination of the administrative methods and policies by which the Convention is applied, (c) the extent to which the Convention was to have retroactive application, and (d) the effect of denunciation of the Convention upon private rights acquired thereunder.

The Nature of the Problem

The problem which this Convention is an attempt to solve arises in the following way.[2] When a person claims a pension under a social insurance scheme the length of time for which he has been insured may be relevant in a number of ways, which differ somewhat from scheme to scheme and according to the risk in respect of which a pension is claimed but the general nature of which is sufficiently illustrated by the following examples. There may be a requirement that a qualifying period (a period of minimum duration of liability to insurance) must have been fulfilled either since entry into insurance or during a period immediately preceding the happening of the event insured against. The extent to which and manner in which a person may retain his rights on ceasing to be com-

[2] For a fuller statement of the problem see International Labor Conference, Eighteenth Session, Report IV, *Maintenance of the Rights in Course of Acquisition and the Acquired Rights of Migrant Workers under Invalidity, Old-Age and Widows' and Orphans' Insurance* (referred to in subsequent footnotes as *Grey Report*), pp. 3-8. For a general survey of pension insurance schemes existing in 1933 see International Labor Office, Studies and Reports, Series M (Social Insurance), No. 10, *Compulsory Pension Insurance.*

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pulsorily insured, or may revive his rights on becoming insured again after they have lapsed, may be determined by the length of his previous insurance career. Under some systems the rate of pension payable may depend, in whole or in part, upon length of insurance. Again, a certain length of insurance may be a condition of being entitled to special advantages such as a guaranteed minimum rate of pension. From all these points of view a person whose insurance career has been spent in more than one country is obviously prejudiced if his insurance career in one country only is taken into account. The result of breaks in his insurance career may be that after a long period of insurance an unpredictable risk such as invalidity or death may overtake him at a time when there is no country in which he satisfies both the condition of having fulfilled the qualifying period and the condition that his rights are still maintained. Even in respect of the predictable risk of old age the rate of pension payable may be calculated on the basis of only a fraction of his insurance career. The position is sometimes further complicated by the existence of nationality discriminations, particularly in respect of entitlement to benefit components derived not from contributions but directly from state funds, and by the existence of restrictions upon the payment of pensions to persons resident outside the country in which the right thereto was acquired.

The Elements of a Solution

A problem of this kind can be solved only by international agreement, and such an agreement must, if it is to be satisfactory, embrace three matters. It must provide for the removal of any general discriminations based on nationality; it must apply in some suitable way the principle that the insurance careers of migrants are to be treated as a whole; and it must provide for the removal of restrictive residence conditions even in cases in which such conditions do not amount to a discrimination based on nationality. The chief difficulty is that of finding a suitable way of applying the principle that the insurance careers of migrants should be treated as a whole. Three methods have been suggested. The first, the transfer of

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the migrant's contributions wherever paid, to some one insurance institution of his choice, which would alone be responsible to him for the payment of benefits, is impractical for a variety of reasons.[3] The second, the transfer at the time of migration from the insurance institution of the emigration country to that of the immigration country of the capital representing the rights in course of acquisition by the insured person, is not compatible with the nature of the financial organization of many insurance schemes.[4] The third method is that of totalization.[5] Totalization schemes have three essential features. Each insurance institution takes into account the total of the periods spent by the migrant in different countries, for the purpose of ascertaining whether he has fulfilled all preliminary conditions of entitlement to benefit which imply a certain duration of insurance; when the risk occurs pensions are payable concurrently by the different insurance institutions totalizing; and the rate of pension payable by each institution is calculated in a manner which ensures an equitable apportionment of the liability for benefit between them. It is by this method that an attempt has been made to find a solution for the problem in the Maintenance of Migrants' Pension Rights Convention.

Conventions Prior to 1935

Certain steps towards the solution of the problem by international agreement had already been taken before the adoption of the Maintenance of Migrants' Pension Rights Convention. In the first place, a number of bilateral treaties on the subject had been concluded between states specially interested.[6] In the second place, the International Labor Conference itself had taken certain first steps by including in the Conventions prescribing general standards of pension insurance which it adopted at its Seventeenth Session in 1933 [7] a few general rules

[3] This method is discussed in *Grey Report*, pp. 9-13.

[4] This method is discussed in *Grey Report*, pp. 14-32.

[5] For a full account of totalization see *Grey Report*, pp. 33-106.

[6] A list of these will be found in *Grey Report*, pp. 222-224.

[7] There are six Conventions, one covering industry, commerce and the liberal professions and one agriculture for each of the three risks—old age, invalidity and death.

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relating to the position of foreigners under pension insurance schemes.[8] These Conventions require the abolition of nationality discrimination in respect of admission to insurance, conditions of entitlement to benefit, and residence conditions, in some cases subject to reciprocity, but it was not within their scope to provide that the insurance careers of migrants shall be treated as a whole and they do not prohibit residence conditions which do not involve discrimination based on nationality. Though in one sense the completion of a program partly embodied in these earlier Conventions, the Maintenance of Migrants' Pension Rights Convention is an instrument entirely independent of them and may be ratified by Members of the Organization which are not parties to any of them, and in view of this absence of any special relationship between the 1933 Conventions and the Maintenance of Migrants' Pension Rights Convention certain provisions of the latter overlap, though they are more complete than, certain provisions of the 1933 Conventions.[9]

The Maintenance of Rights in Course of Acquisition under the Convention

The provisions of the Maintenance of Migrants' Pension Rights Convention relating to totalization and the apportionment of liability are contained in Part II thereof. The insurance periods spent by persons who have affiliated to insurance institutions of two or more Members bound by the Convention are to be totalized by each such institution irrespective of the nationality of such persons [Article 2 (1)]. Contribution periods are to be totalized for all purposes and there are detailed provisions as to the extent to which, and purposes for which, periods assimilated to contribution periods under one or another of the relevant legislations are to be totalized [Article 2 (2) and (3)]. The necessary apportionment of benefit

[8] Articles 12, 21 and 23 of the Old-Age Insurance (Industry, etc.) Convention, 1933, and the corresponding articles of the other five Conventions.

[9] E. g., *cf.* Article 10 of the Maintenance of Migrants' Pension Rights Convention with Articles 12 and 23 of the Old-Age Insurance (Industry, etc.) Convention.

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liability is provided for by Article 3, paragraph 1 of which provides that "Each insurance institution from which on the basis of the totalized insurance periods the claimant is entitled to benefit shall calculate the amount of such benefit according to the laws and regulations governing the said institution." In virtue of paragraph 2 of the same Article benefits or benefit components which vary with the time spent in insurance and are determined with sole regard to the periods spent under the laws and regulations governing the insurance institution liable, are to be payable without reduction. This is clearly just, but it would not be just that benefits determined independently of the time spent in insurance should be payable simultaneously at the full rate by a number of insurance institutions on the basis of the same totalized periods. Paragraph 3 therefore provides that

> Benefits or benefit components which are determined independently of the time spent in insurance and consist of a fixed sum, a percentage of the remuneration taken into account for insurance purposes, or a multiple of the average contribution, may be reduced in the ratio of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing the institution liable to the total of the periods counted for the purpose of reckoning benefits according to the laws and regulations governing all the institutions concerned.

Most of the remaining articles of Part II of the Convention are of a subsidiary character and relate to matters such as the right to decline liability in respect of short periods of insurance,[10] liability for complementary benefit toward persons who would otherwise be prejudiced by the application of the Convention,[11] the presentation of claims[12] and the rate of exchange.[13] Articles 6 and 9, however, are of more general interest. Article 6 permits a limited measure of contracting out from the international scheme, a matter which will be discussed in greater detail in connection with a contracting-out provision of more general scope which appears later in the

[10] Article 4.
[11] Article 5.
[12] Article 7.
[13] Article 8.

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Convention. Article 9 provides that "Any Member may decline to apply the provisions of this Part of this Convention in its relations with a Member, the laws and regulations of which do not govern the risk in respect of which a benefit is claimed." This provision was included on the ground that Members with only an old-age insurance scheme are eligible parties to the Convention.[14] Its effect is to subordinate to reciprocity in respect of each risk the part of the Convention relating to the maintenance of rights in course of acquisition, while leaving unconditioned by any reciprocity requirements Part III, which relates to the maintenance of acquired rights in the event of residence abroad.

The Maintenance of Acquired Rights under the Convention

The basic provisions relating to the maintenance of acquired rights[15] are stated in Article 10 which defines the extent to which persons who are not resident in a country in which they are entitled to a pension shall be entitled to continue to receive the entirety of the benefits the right to which has been acquired in virtue of their insurance. If resident in the territory of a Member bound by the Convention they are to be so entitled irrespective of their nationality.[16] If nationals of a Member bound by the Convention they are to be so entitled irrespective of their place of residence.[17] Either residence or nationality will suffice, but either the residence or the nationality condition must be fulfilled. Fulfilment of the residence condition is in one respect less advantageous to the claimant than fulfilment of the nationality condition, for the first proviso to the Article allows "any subsidy or supplement to or fraction of a pension

[14] The level of insurance required by the Convention is stated in Article 17. Each Member must have either (a) "a compulsory insurance scheme under which pensions are payable at an age not later than sixty-five to the majority of persons employed in industrial and commercial undertakings" or (b) "a compulsory invalidity old-age and widows' and orphans' insurance scheme covering a substantial proportion of the persons employed in industrial and commercial undertakings."

[15] For a general discussion of the maintenance of acquired rights see *Grey Report*, pp. 108-131.

[16] Article 10 (1) (a).

[17] Article 10 (1) (b).

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which is payable out of public funds" to be withheld from "persons who are not nationals of a Member."[18] This implies that claimants fulfilling only the residence condition may in countries in which advantage is taken of this proviso find themselves entitled only to the part of the pension derived from contributions. A further restriction results from a second proviso[19] in virtue of which any Member may, during a transitional period of five years from the first coming into force of the Convention, reserve the payments enumerated above to the nationals of Members with whom it has concluded supplementary agreements to that effect.

Article 11, which refers to the commutation of pensions, states a general rule that no pension may be commuted for a lump sum smaller than its capital value, but there is a proviso to the effect that pensions the monthly value of which is inconsiderable may be commuted for smaller sums calculated according to the laws and regulations governing the institution liable for benefit, subject to there being no special reduction on the ground of residence abroad. Article 13 places it on record that an insurance institution liable for benefit in virtue of the Convention may discharge in the currency of its own country its liability to all persons entitled to such benefit.

Mutual Assistance in Administration under the Convention

Parts II and III of the Convention are concerned with the relationships of the individual claimant with the various insurance institutions with which he comes into contact. Part IV is concerned with the relationships *inter se* of the insurance institutions. The general principle is that the authorities and insurance institutions of each Member are to afford administrative assistance[20] in the application of the scheme to those of other Members to the same extent as if the authorities and institutions in question "were applying their own laws and regulations relating to social insurance".[21] It is particularly speci-

[18] Article 10 (2). [19] Article 10 (3).

[20] For a general discussion of mutual assistance see *Grey Report*, pp. 156-172.

[21] Article 14 (1).

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fied that at the request of an institution of any Member that of the other Member shall "carry out the investigations and medical examinations necessary to determine whether the persons in receipt of benefits for which the latter institution is liable satisfy the conditions for entitlement to such benefits",[22] a provision of this kind being a natural complement to the removal of residence restrictions upon the payment of benefits. Members are at liberty to regulate by special agreement the financial relationships arising out of such assistance, but in the absence of such agreement are liable to each other for the expense thereof.[23] Any exemption from fees granted by the laws or regulations of a Member in respect of documents furnished to its authorities or insurance institutions is to be extended to the corresponding documents furnished in connection with the application of the Convention to the authorities and insurance institutions of any other Member.[24] An insurance institution liable for benefit may, with the consent of the competent central authorities of the Members concerned and on terms agreed between the two institutions, entrust the insurance institution of the place of residence of the beneficiary with the payment of such benefit on its behalf,[25] but there is no obligation upon any insurance institution to undertake such payment on behalf of another institution in the absence of an agreement between them defining terms.

Part V of the Convention

Part V of the Convention contains the provisions already referred to relating to contracting out, administrative coördination of measures for the application of the Convention, extent of retroactive application, and effect of denunciation upon acquired rights.

Extent to Which Contracting Out is Permitted

It is unnecessary to consider here the extent, if any, to which the general rules of international law permit some of the parties to a multilateral convention which includes no express provision

[22] Article 14 (1).
[23] Article 14 (2).
[24] Article 15.
[25] Article 16.

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on the subject to withdraw their mutual relationships from its operation.[26] The case can rarely arise in connection with the application of International Labor Conventions since most of these lay down rules of such a character that all the parties have in law an equal interest in their effective application. If a convention prescribes limits of hours of work or prohibits the employment of children below a certain age, it is in the nature of things impossible for any of the parties thereto to vary its requirements in respect of their mutual relations while continuing to respect those requirements in relation to the other parties to the convention. But it is believed that even in cases in which such variation is not in the nature of things impossible, and irrespectively of whatever the general rules of international law on the subject may be, it would be contrary to principle to admit the validity of such variation in the case of International Labor Conventions. Take as an illustration the Equality of Treatment (Accident Compensation) Convention, 1925, and assume that two Members bound by this Convention were to agree to qualify in some way so far as their mutual relationships are concerned the right to national treatment provided for on a reciprocity basis by the Convention. Would such an agreement be valid? The answer is clearly in the negative. International Labor Conventions are adopted at a Conference in which employers' and workers' delegates have the same status as their governmental colleagues, and though ratification by governments is required to bring the Conventions into force, such ratification automatically brings into operation certain provisions of the Constitution [27] of the Organization in virtue of which the non-governmental elements participate in a system of supervision and sanctions intended to ensure the effective application of conventions. It is impossible to form any true appreciation of the legal character of the International Labor Organization, or to come to just conclusions upon many of the legal problems which confront it, unless it is recalled

[26] Upon this see P.C.I.J., *Series A/B, No. 63*, the Oscar Chinn Case, Separate Opinion of Jonkheer Van Eysinga, pp. 131-136, and Separate Opinion of M. Schücking, pp. 146-150.

[27] Articles 22-29 and 34.

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that the Organization stands midway between international coöperation between sovereign states and world organization based on coöperation between vocational groups. It is already generally recognized that this special character of the Organization makes reservations to International Labor Conventions completely inadmissable,[28] for it would not be sufficient as in the case of other general conventions to obtain the consent of the other parties to the convention. The views of the non-governmental elements which participate both in the preparation of and in the supervision of the application of conventions would also require consideration, and in practice their approval of reservations could only be given by the cumbersome process of the revision of the convention. Similar reasoning applies to the case of contracting out from a convention. It is, however, obviously possible to permit either reservations or contracting out by the inclusion in the text of the convention of specific provisions upon the subject, for the various interests represented in the International Labor Conference are always at liberty to agree by their approval of the text of a convention to delegate certain powers as regards its future operation. In the case of the Maintenance of Migrants' Pension Rights Convention it was desired to permit a certain measure of contracting out. Articles 6, 8 and 14 (2) permit specified requirements of the Convention to be varied by agreement, and there is also a general provision, Article 19, which is as follows:

> The provisions of this Convention may be derogated from by treaties between Members which do not affect the rights and duties of Members non-parties to the treaty and which make definite provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favorable on the whole as those provided for in this Convention.

A provision of such general scope might have been unnecessary

[28] See the Memorandum by the Director of the International Labor Office submitted to the Council of the League of Nations on June 18, 1927, (League of Nations, *Official Journal*, 8th year, No. 7, July 1927, pp. 882-884) and comments thereupon by the Committee of Experts for the Progressive Codification of International Law consisting at the time of MM. Fromageot, Diena and A. D. McNair (*ibid.*, pp. 881-2).

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if the Convention had been adopted before the conclusion of any bilateral treaties upon the subject, but in view of the existence of some dozen such treaties between countries intimately affected by the problem it was thought wiser to conceive of the proposed international scheme, not as something intended to replace all existing arrangements, but as a scheme which would apply in the relationships of all parties to it not reciprocally bound by other equally satisfactory arrangements, and which would therefore make unnecessary the conclusion of a very large number of further bilateral treaties without requiring the abandonment of treaties already in satisfactory operation and without preventing the conclusion of further bilateral agreements in cases in which the importance of the migration between two countries justifies the existence of special arrangements. It is obvious that difficult questions may arise as to whether the provision made for the maintenance of rights under bilateral treaties is in particular cases "at least as favorable on the whole" as the Convention requires, but there is much less objection to leaving such questions open in the case of a convention concluded under the auspices of a permanent organization than there would be in the case of a convention adopted by an *ad hoc* conference.

Administrative Coördination of Measures for Application of Conventions

Provision already exists for supervision after the event of the application of International Labor Conventions. Under Article 22 of the Constitution of the Organization each Member is under an obligation to make an annual report on "the measures which it has taken to give effect to the provisions of Conventions of which it is a party". These reports are to be made in such form and are to give such particulars as the Governing Body may request, and the Director is to lay a summary of them before the Conference each year. It is now customary for the reports to be submitted for examination to a Committee of Experts appointed by the Governing Body and for the report of the Committee of Experts to be annexed to the summary of reports laid before the Conference. At each Session of the Conference a Committee is appointed to consider

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these documents.[29] But this system, completed though it is by the compulsory jurisdiction of the Permanent Court of International Justice in all disputes relating to the interpretation of conventions[30] and by the procedures of representation and complaint,[31] provides only for an *ex post facto* review of application. It was felt that satisfactory application of so complicated an instrument as the Maintenance of Migrants' Pension Rights Convention could be ensured only if provision was made for coördinating in advance the administrative methods and policies through which it is applied. It may, for instance, be necessary to prepare model regulations upon various points. The Convention therefore provides[32] for a Commission which is to consist of one delegate for each party to the Convention together with three persons to be appointed respectively by the government, employers' and workers' representatives upon the Governing Body of the International Labor Office. The function of the Commission is that of "assisting Members in applying this Convention" and it is provided that "at the request of one or more Members concerned, the Commission, which shall be guided by the principles and purposes of this Convention, shall make recommendations as to the manner in which it shall be applied." The Commission is an interesting illustration of the improvements gradually being made in the technique of treaty application and if successful may be a model to be followed in connection with other international conventions.

Extent of Retroactive Application

Old controversies as to the effect of ratification in making treaties retroactively binding from the date of signature[33]

[29] The Summary of Annual Reports upon the Application of Conventions is a mine of information. Every five years it contains all available information, only new and changed information being submitted to the Conference in intervening years. The last full statement was submitted to the Conference at its Seventeenth Session in 1933.

[30] Article 37 of the Constitution of the Organization.

[31] Articles 23-34 of the Constitution of the Organization.

[32] Article 20.

[33] For discussions of certain aspects of this question by the Permanent Court of International Justice see P.C.I.J., *Series A, No. 2,* p. 34 (Mavrommatis Palestine Concessions Case [No. 1]), and *Series A, No. 7,* p. 30 (Case concerning certain German interests in Upper Silesia).

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have no application to International Labor Conventions, for, all questions of general principle apart, the matter is dealt with in clear terms in the standard articles of conventions, in which it is now customary to provide that they shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Secretary-General of the League of Nations, and thereafter for each Member twelve months after the date of registration of its ratification. There are, however, certain special problems of retroactivity which required consideration in connection with this Convention.[84] At the time of its coming into force there would be innumerable cases in which pensions had not been awarded or their payment had been suspended on the ground of residence abroad, in which periods which under the Convention would be subject to totalization had already been spent, and in which claims had been settled before the coming into force of the Convention without reference to its provisions. Some provision for these cases was obviously necessary. If the Convention were so expressed as to apply only to future claims and, even more emphatically, to future insurance periods, it would ensure only a very imperfect degree of protection to migrants for many years to come. If, on the other hand, sums which should have been due in virtue of it in the past if it had then been in force were made payable, an impossible situation would be created for the insurance institutions. The compromise adopted and embodied in Article 21 of the Convention was to provide that the rules laid down in the Convention shall apply as regards future payments arising from claims or periods prior to its coming into force.

Effect of Denunciation upon Acquired Rights

The form of denunciation article normally included in International Labor Conventions permits denunciation subject to a year's notice after the expiration of a period which is generally either five or ten years reckoned from the coming into force of the Convention. In the more recent conventions there is also a

[84] These are discussed in *Grey Report*, pp. 135-155.

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tacit reconduction clause providing that a Member which does not exercise this right of denunciation within a prescribed period, normally one year, shall then be bound for another period and may only denounce at prescribed intervals thereafter. In the case of the majority of International Labor Conventions no question arises as to the effect of denunciation upon private rights acquired under the Convention, but in the case of the Convention under discussion this question is of capital importance [35] and special rules relating to it are laid down by Article 22 which provides that denunciation of the Convention by a Member shall not affect the liabilities of its insurance institutions in respect of claims which *matured* before the denunciation took effect, that is to say in cases in which the event insured against happened before the denunciation took effect. Denunciation does not leave unaffected liabilities accruing after denunciation towards persons who while contributing have had an expectation of being protected by the Convention, and from the date on which the Convention ceases to be in force insured persons whose claims have not matured must therefore take such steps as may be necessary and possible to safeguard their position under the laws and regulations governing the insurance institutions concerned. To this extent the degree of protection ensured by the Convention is not complete, but since there are comparatively few international conventions in which any attempt at all has been made to solve the problem,[36] this attempt at its solution should be watched with interest by all students of international legislation.

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[35] For an account of the provisions on the subject contained in bilateral social insurance treaties see *Grey Report*, pp. 180-185.

[36] For other attempts to deal with the same problem see the Convention on Financial Assistance—Geneva, October 2, 1930, Article 35 (*League of Nations Document C. 611(1) M. 237(1)*, 1930, IX) and the Convention for the Creation of an International Agricultural Mortgage Credit Company—Geneva, May 21, 1931 (*League of Nations Document C. 434(1) M. 181(1)*, 1931, II A). Neither of these Conventions is in force. For the position under the Convention for the Protection of Industrial Property see Stephen P. Ladas, *The International Protection of Industrial Property*, § 63.

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JOINT ACTIVITY BETWEEN FEDERAL AND STATE OFFICIALS[1]

SINCE the early days of the American Union the controversy over the respective spheres of state and federal power has persisted. The problem of demarcating state and federal activity set the supporters of the doctrine of states' rights against those advocating the augmentation of federal power. In the deep roots of American thought, independent state action stands in direct antithesis to the expansion of federal agencies. The country has a long tradition of systematic decentralization of administration and a fear of the "federal octopus" stretching its tentacles from Washington into every home in the land.

Complete independence of the federal and state governments was neither contemplated by the Fathers nor carried out in actual administrative practice by their successors. Government has surged forward ruthlessly, blurring the line of cleavage between the two opposing views concerning federal centralization and local autonomy. This surge has often merged centralization with decentralization. There is therefore need for examination of administrative arrangements midway between the extremes of centralization and localization. This inquiry will be directed to the consideration of the activities jointly undertaken by federal and state governments.[2]

Government today is so largely a matter of expert administration that, as the spheres of federal and state activity draw more closely together, federal and state administrations need to

[1] This material is part of a study of Federal-State Cooperative Devices in Social Legislation now in course of preparation under a grant from the Columbia University Council for Research in the Social Sciences.

[2] Legislative interrelationships will be examined in a separate study and judicial coöperation is beyond the scope of the present study.

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be meshed together. These administrations are no longer entirely separate and independent machines, each with its own organizations and officials. The work of federal and state administrative officials overlaps where it is concerned with common territory, similar subject matter, or similar legal powers, such as those given by concurrent power, grant-in-aid acts, and jurisdictions over interstate and intrastate commerce.[3] On the one hand, there is opportunity for decentralized and uncorrelated administrative activity; on the other, the possibility of synchronized administrative activity between federal and state officials. The "weaving of horizontal lines of functional union" is new in neither the theory nor the practice of American government.[4] In the early days of the federal union, Madison and Hamilton expressed the opinion that state officials would be used by the federal government to effectuate its powers,[5] while Pinckney went so far as to suggest that the union must depend on the states for the execution of these powers. While this prediction has not been fulfilled, joint federal-state activity has become of increasing importance as problems of economic and social control have transcended the boundaries of the individual states. Pinckney envisaged a one-way flow. In fact, the current flows two ways. The federal government utilizes the machinery of the states for aid in the administration and enforcement of its law and, *mutatis mutandis,* the states utilize the organization of the federal government to further their purposes. Such correlated activity surrounds us. It is possible to examine only a few of the situations in which it has been found useful, to the end that some ray of light may be thrown on its possible future usefulness on the front of social legislation where both federal and state governments have been marching forward.

[3] These will be discussed in later studies.

[4] Report of the Round Table Conference on Federal Relations, XXII *American Political Science Review*, May 1928, p. 429.

[5] *The Federalist*, Nos. 1, 39, 45, 46, 47, 48, 49, 51, 52, 53, 54, 58, 63, 64, 67, 68, 70, 72, 73, 77. *Cf.* Holcombe, A., "The States as Agents of the Nation", I *Southwestern Political Science Quarterly*, 1921, p. 307.

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A. RESTRICTIONS ON JOINT ACTIVITY

I. *Federal*

Joint activity by federal and state officials is controlled by the scope of authorization, prohibitions or restrictions in the federal and state constitutions, statutes and executive orders. The federal and state constitutional and statutory hurdles must first be cleared.

1. *By Federal Legislation*

The federal path to joint activity is comparatively unencumbered. The federal constitution contains no restrictions preventing it. Only the provision that no senator or representative or person holding an office of trust under the United States shall be appointed a presidential elector [6] has any bearing on the subject, and the realities of political party organization render this provision of minor importance.

Nor is there any federal statute making federal officials *ipso facto* entirely ineligible for state service. There are, however, provisions of federal law which impose limitations. For instance, no person receiving a federal or state salary amounting to $2500 may, without special authorization of the federal government, be appointed an officer of the other unit of government, if he is paid any salary in addition to the amount stipulated.[7] Furthermore, some federal acts, indirectly at least, present obstacles to action by state officers on behalf of the federal government, as for instance the federal Civil Service [8] and Veterans' Preference [9] which might easily operate to debar state officials from federal service.

2. *By Federal Administrative Action*

The first important executive interference in the exercise of federal functions by state officers occurred under President Grant. In the years immediately following the Civil War,

[6] Art. II, Sec. 1, Par. 2.

[7] U. S. Comp. Stats. (1925 Supp.), Sec. 3231.

[8] 22 Stat. L. 403.

[9] R. S. 1754, 312.

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"carpet-bagger" federal office-holders flocked southward in such numbers that they soon permeated the official state posts of the southern states. President Grant believed that "with few exceptions, the holding of two such offices by the same person is incompatible with due and faithful discharge of the duties of either office; that it frequently gives rise to great inconvenience; and often results in detriment to the public service; and moreover is not in harmony with the genius of the Government".[10] Consequently he issued an executive order announcing that "persons holding any Federal civil office by appointment under the Constitution and laws of the United States, will be expected, while holding such office, not to accept or hold any office under any State . . . ." The order, however, contained within itself the germs of its own destruction, for it allowed numerous exceptions, such as justices of the peace, notaries public, commissioners to take acknowledgment of deeds, of bail, or to administer oaths, sheriffs, deputy marshals, deputy postmasters with salaries of not more than $600 per year, provided their state appointments did not interfere with the discharge of their duties as postmasters.

Gradually, further exceptions were added by later orders until the original prohibition became lost beneath the load of exceptions. In 1907, an exception was made of federal forestry officials who were authorized to accept appointment as state officers[11] and in 1917 federal forest reclamation and national park officials were added to the list of those authorized to accept state appointments.[12] The effectiveness of the Grant order had decidedly weakened. The Great War, however, destroyed it, for an executive order of President Wilson permitted the appointment of federal employees of the Treasury Department "with the approval of the Secretary of the Treasury, on any State . . . council or committee of defense for purposes of mobilizing and conserving the resources of the country."[13]

[10] Executive Order, January 17, 1873, applying from and after March 4, 1873.

[11] Executive Order of June 13, 1907.

[12] Executive Order of April 14, 1917.

[13] Executive Order No. 2596, April 14, 1917.

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3. *By Political Exigency*

Political controversy scatters hazards in the path of joint action, as did the bitter altercation between Secretary of the Interior Ickes and Commissioner of Parks Robert Moses of New York. By a contract of September 1, 1933, between the Public Works Administration and the Triborough Bridge Authority, federal funds were allotted for the construction of the Triborough Bridge. Some months later, Commissioner Moses, although retaining the Park Commissionership,[14] was appointed as an unsalaried member of the Authority by Mayor La Guardia. On December 26, 1934, an administrative order of the Public Works Administrator stipulated that no funds were to be advanced to any authority "constituting an independent corporation or entity created for a specific project within a municipality" any "members of the governing body of which . . . hold any public office under said municipality." [15] For several months no payment of federal funds was made to the Triborough Bridge Authority as Mr. Moses had not resigned his position. During this time criticism was violent and vituperative on both sides.[16] Finally the federal authorities capitulated. Secretary Ickes wrote to the Mayor of New York stating that the administrative order was not retro-

[14] Mr. Moses was also chairman of the State Council of Parks and President of the Long Island State Park Commission. Only the Park Commissionership carried a salary.

[15] Order No. 129, Federal Emergency Administration of Public Works, P. W. 24899.

[16] On January 15, 1935 a resolution was introduced in the New York Assembly and later defeated by a strict party vote. It was addressed to President Roosevelt and stated that the order had given rise to suspicions that the P.W.A. funds were not being administered in a non-partisan spirit, that the federal government was attempting to administer the government of the city of New York, and that the order had been motivated by antagonism against Commissioner Moses because he had publicly disagreed with the policies and philosophies of the present administration. The resolution called attention to the fact that Mr. Moses had been authorized to serve on the Triborough Bridge Authority by the legislature of New York state, that he was serving without pay, and that he had already made a unique record of achievement in expediting the work in hand. *New York Times*, Jan. 16, 1:5; Jan. 22, 15:2; Jan. 23, 7:1; Jan. 24, 16:5; Feb. 1, 2:4; Feb. 3, 17:1, 1935.

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active and so would not apply either to Mr. Moses or to Mr. Langdon Post, chairman of the New York City Housing Authority, and at the same time Tenement House Commissioner of the city, as both of these men had been members of the respective Authorities when the Public Works Administration contracts granting federal funds had been made.[17]

The political fracas may be indicative of more subtle difficulties as in Key West.[18] Struck by one industrial cataclysm after another, the city found itself bereft of both industry and credit, abandoned the attempt to run itself and so the city council gave over its powers to the governor of the state.[19] The governor turned the bankrupt city over to Mr. Julius F. Stone, the Emergency Relief Administrator for the state of Florida. As the governor's agent, Mr. Stone was a state official, but when he was appointed a Field Representative of the Federal Emergency Relief Administration, he became a federal official. Mr. Stone's letter of resignation as the agent of the governor reveals the complicated federal and state relationships in that situation:

> . . . I find that the impression is rather general that the Federal Government is responsible for administering the affairs of the City and County.
>
> Although the impression is wholly erroneous, it nevertheless exists. It probably arises from the fact that all the relief funds coming into Florida are Federal funds, and because I happen to be administering them.
>
> So long as my responsibilities were confined wholly to the State of Florida, there seemed to me to be no reason for changing the arrangement in order to thus avoid the ambiguity which we sought to clarify by giving correct information whenever the question arose. As you know, however, Mr. Hopkins has recently designated me as his Representative for the South-Eastern States, the Virgin Islands, and Puerto Rico. Thus the inference that Key West is being administered by Federal authority might now have some color of truth were I to continue

[17] *Ibid.*, March 12, 1:1, 1935.

[18] For detailed discussion of this situation, *cf.* Clark, Jane Perry, "Key West's Year One", *Survey Graphic*, August 1935.

[19] By resolution of July 2, 1934.

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to act as your agent for the administration of civil authority in Key West and Monroe County.

Since this delegation of civil authority to the Governor is purely a State function which in no wise involves the Federal Government and since the inference to which I have referred might, were it to become widespread, react unfavorably on the Key West rehabilitation movement, I respectfully suggest that you permit me to withdraw as your agent for the administration of civil authority in Key West and Monroe County as soon as convenient.

. . . . . .

(Signed) JULIUS F. STONE, JR.,
Administrator.[20]

II. *State Restrictions on Joint Activity*

These exceptional difficulties only demonstrate how relatively open the federal road is to joint activity by federal and state officials. The states, however, post numerous warning and deterring signals. To prevent double distribution of political and pecuniary favors and spread them widely among the politically faithful, various states by their constitutional provisions prevent the dual holding of office, whether it be of federal and state offices held simultaneously or of two offices within the same state.[21] Nevertheless there are numerous exceptions made for officials in the militia, postmasters receiving less than a certain amount of annual compensation,[22] justices of the peace, notaries public, commissioners of deeds, etc. The broad principle which prevails is that the more important state officials should simultaneously hold no federal office if it is, technically speaking, lucrative, irrespective of the amount of the compensation.[23] Delaware, Florida, Rhode Island and

[20] *Key West in Transition*, published by Key West Administration, Dec. 1934, pp. 64-65.

[21] The constitutions of Cal., Ga., La., Maine, Minn., Miss., Mo., Mont., Nev., N. H., Ohio, Okla., Oregon, Pa., R. I., S. C., S. D., Tenn., Tex., Utah, Vt., Va., Wash., W. Va., Wis., Wyo. contain such provisions.

[22] Usually from $100 to $500.

[23] State of Nevada *ex rel.* George A. Nourse *v.* Robert M. Clarke, 3 Nev. 566 (1868).

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Utah go further and include office "for honor" among their prohibitions.

Even in the states with constitutional restrictions, a person may engage in joint federal and state administrative activity if his work for the latter constitutes *employment* rather than holding of office. The distinction between the two is probably based on the tradition of the old common-law incompatibility of offices,[24] under which one person may not occupy two offices if the performance of the duties of one would interfere with those of the other. Such incompatibility may be based on the grounds of "public policy",[25] the multiplicity of affairs in the offices,[26] and, most important, "inconsistency in function of the two offices, and not the mere lack of time or inability properly to perform the duties of the two offices".[27] Mere physical inability of one person to perform more than one set of duties does not make the two offices legally incompatible,[28] though such inability might conceivably lead to proceedings for removal from the neglected office.[29] Inconsistency and incompatibility may be found if one officer has administrative control over another, or is appointed by him or has power over his removal, or if one office is judicial and the other ministerial.[30]

In the last analysis, the question to be determined in every instance of joint federal and state activity by the same officials is whether one or more of their positions constitute "public office."[31] The line of demarcation between public office and

[24] *Cf.* Pfiffner, J., *Public Administration*, Ch. XXI, p. 436 (1935).

[25] L.R.A. 1917 A 216.

[26] State *v.* Buttz, 9 S. C. 156 (1877).

[27] Howard *v.* Harrington, L.R.A. 1917 A 211, quoted Hart, J., "Some Legal Questions Growing out of the President's Executive Order for Prohibition Enforcement", XIII *Virginia Law Review*, p. 101.

[28] Fekete *v.* City of East St. Louis, 145 N. E. 692 (1924); Bryan *v.* Cattell, 15 Iowa 538.

[29] Kingston Associates *v.* Fiorello H. La Guardia & Frank J. Taylor, Supreme Court, New York County, *N. Y. Law Journal*, July 2, 1935.

[30] L.R.A. 1917 A 219-221, quoted Hart, *loc cit.*

[31] In this situation, the definition of "office" is more important than of "public". For definitions of "public" *cf.* Breckinridge, S. P., *Public Welfare Administration in the United States* (1927), p. 5.

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public employment is none too clear, and varies between one state and another.[32] It does not rest upon differences in the qualifications necessary to fill the positions or in the character of the services to be performed.[33] Public office is the "right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public."[34] The idea of investiture with some portion of the sovereign functions of the government is the crux of the matter, but this quality is difficult to determine. It may include the necessity for definite appointment and tenure.[35] But absence of tenure does not preclude a position from constituting an office[36] and employment may also imply definite tenure. Nor is salary the criterion.[37] The taking of an oath of office, and giving of a bond, have occasionally been held to be important elements in public office.

In short, if no oath of office is taken, no salary paid and no definite term of office prescribed and if no formal commission bearing a governmental seal issued, a position may be said to be employment rather than an office, but in the final analysis whether a person in the service of the government is an officer or employee is generally determined by the manner in which the position is created by statute.[38]

[32] 69th Cong., 1st Sess., 67 *Cong. Record*, p. 9987.

[33] Burnap *v.* United States, 252 U. S. 512 (1919); 15 Ops. Atty. Gen. 3; 17 Ops. Atty. Gen. 532; United States *v.* Hartwell, 6 Wall. 385; U. S. *v.* Moore, 95 U. S. 760, 762; U. S. *v.* Perkins, 116 U. S. 483; U. S. *v.* Mouat, 124 U. S. 303; U. S. *v.* Hendee, 124 U. S. 309; U. S. *v.* Smith, 124 U. S. 525.

[34] Mechem, F. R., *A Treatise on the Law of Public Offices and Officers* (1890), Sec. 1; Kingston Associates, Inc. *v.* Fiorello H. La Guardia & Frank J. Taylor, Supreme Court, New York County; *cf.* also, Matter of Dawson *v.* Knox, 231 App. Div. 490; Groves *v.* Barden, 84 S. E. 1042.

[35] United States *v.* Hartwell, 6 Wall. 385 (1867); Metcalf & Eddy *v.* Mitchell, 269 U. S. 514 (1925); Helvering *v.* Powers, 293 U. S. 214 (1934).

[36] United States *v.* Hartwell, 6 Wall. 385.

[37] Kingston Associates *v.* Fiorello H. La Guardia.

[38] Burnap *v.* United States, 252 U. S. 512.

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The difficulty of distinction between office and employment was illustrated when Mayor La Guardia of New York accepted an appointment by President Roosevelt to represent the United States Conference of Mayors on the Advisory Committee on Allotments of the federal government for the allocation of the $4,000,000 work relief fund. The New York charter stipulates that "any person holding an office, whether by election or appointment, who shall during his term of office accept . . . any other civil office of honor, trust or emolument under the Government of the United States . . . shall be deemed thereby to have vacated any office held by him under the city government." [39] The object of this section was to have the entire service of the city officials and to prevent the abuses of divided interest.[40] The prohibition was not directed at office-holders who devote only part of their time to city work. Although the duties of Mayor La Guardia on the committee were purely advisory, suit was brought against him on the ground that he had automatically vacated his city office by accepting the federal appointment. The court [41] refused to entertain the idea and held that the federal appointment merely made him a public employee rather than officer because as a member of the Advisory Committee he possessed no portion of the sovereign power.

There are many cases of persons holding state office who have been thereby automatically disqualified from appointment to federal posts.[42]

Political considerations may of course raise their ugly heads as they apparently did in Louisiana when Paul N. Cyr was elected Lieutenant Governor of the state and Huey Long,

[39] Greater New York City Charter, Sec. 1549.

[40] Ch. 782, N. Y. Laws of 1933 as amended by Ch. 585, Laws of 1935 specifically provides that city officers in New York state may legally hold salaried positions in state or federal relief agencies.

[41] Kingston Associates *v.* Fiorello H. La Guardia & Frank J. Taylor, Supreme Court, New York County.

[42] Dickson *v.* the People *ex rel.* Brown, 17 Ill. 191 (1855); State *ex rel.* McMillan *v.* Sadler, 58 Pac. 284 (1899); Hoglan *v.* Carpenter, 4 Bush's Ky. Rep. 89 (1868); Patterson *v.* Miller, 2 Met. 493 (1859); State *ex rel.* Hazelton *v.* Turner, 169 N. W. 304 (1918).

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Governor. Soon thereafter, Long was elected United States Senator. According to a state constitutional restriction,[43] forbidding any member of Congress to hold or exercise any office of trust or profit under the state, it appeared obvious that Long could not hold both offices. Long, however, refused to vacate his state office. When the case came to court, it was held that under the federal Constitution each house of Congress is the sole judge of the elections, returns and qualifications of its own members[44] and so the Senate alone, not the court, could determine Long's eligibility to a seat in that body. On the other hand, the court held that as the state constitution provided the possibility of impeachment for a governor,[45] the court could not entertain a suit for removal from office.[46]

A state may forget its own constitutional restrictions. California, despite its prohibition[47] of dual office-holding, authorizes the appointment of federal officials as deputies to enforce the state Fish and Game Code and specifically names them to be " public officers." [48]

B. AUTHORIZATION OF JOINT ACTIVITY

I. *Federal*

If legal or political difficulties do not prevent joint activity, positive authorization may take various forms, such as legislative authorization or administrative action or a combination of both.

The officals of one unit of government, whether it be federal or state, may be designated to perform work for the other. The courts on numerous occasions have upheld[49] the right of

[43] Louisiana State Constitution, Art. XIX, Sec. 4.

[44] Art. I, Sec. 5.

[45] Louisiana State Constitution, 1921, Art. IX.

[46] State *ex rel.* Cyr *v.* Long, 174 La. 169 (1932).

[47] Art. IV, Sec. 20.

[48] Fish and Game Code, Division I, Ch. II, par. 21, Fish and Game Code, California Department of Natural Resources, Division of Fish and Game, Sacramento, 1934.

[49] *Cf.* for instance, United States *v.* Jones, 109 U. S. 513 (1883); Robertson *v.* Baldwin, 165 U. S. 275 (1897); Dallemagne *v.* Moisan 197 U. S. 169 (1905); Harris *v.* Superior Court, 196 Pac. 895 (1921); I Willoughby, W., *Constitutional Law* (2nd ed.), 119; Goulis *v.* State, 140 N. E. 294, 33 *Yale Law Journal*, 636 (April 1924); Selective Draft Law Cases, 245 U. S. 366 (1917).

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Congress to confer powers on state officials, "and the officers may execute the same unless the execution is prohibited by the Constitution or legislation of the State." [50] It is important to note, however, that there is no necessity imposed on state officers to accept the delegation of federal responsibility.

1. *Authorization by Federal Legislation*

The Great War impelled federal utilization of state administrative machinery because of the need for a nation-wide army organized by means which would make available concrete knowledge of local situations and personalities. Therefore, local machinery was utilized to a large extent by the federal government for the administration of the Selective Service Act.[51] The federal-state interrelationship in this field was not a new one, for as early as 1795 the President had been authorized to call forth the militia of the states to execute the laws of the union.[52] Again, during the Civil War the President was allowed to avail himself of state machinery to aid in bringing soldiers into the field, in so far as state laws existed and were of aid in the calling forth of the militia.[53] It was the Great War, however, which developed these interrelationships between federal and state machinery. The system established under the Selective Service Act was centrally supervised through the federal government, but not centrally operated. The local administration wielded a hand comparatively free from control by Washington.[54]

The President was authorized in his discretion to create local draft boards to have charge of registration and examination of the male population of draft age, and to decide on questions of exemption and claim for discharge.[55] The three members

[50] Dallemagne *v.* Moisan, 197 U. S. 169 (1905).

[51] 40 Stat. L. 76 (1917).

[52] Act of Feb. 28, 1795.

[53] *In re* Griner, 16 Wis. 447 (1863). Where no state laws existed, the President could use the original authority conferred on him by the act of 1795; Druecker *v.* Salomon, 21 Wisc. 628 (1867).

[54] *Cf.* Dickinson, J., *The Building of an Army* (1922), p. 181.

[55] Sec. 4, par. 5.

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of each local board were nominally chosen by the President from among the non-military population resident in the area for which the board was established, but actual selection and control of personnel were in the hands of each state governor.[56] Above the local boards were district boards of five members each, similarly appointed but chosen on the basis of their professional activities.[57] Last of all, medical, legal and other special advisory boards were appointed to supplement the local and district boards. The control of the administrative machinery was vested chiefly in the state governors who were

> . . . charged with general supervision over all matters arising in the execution of the selective draft within the state. The determination of the question of exemptions and deferred classifications is within the exclusive jurisdiction of the local and district boards, subject only to review by the President; but all other functions and duties of boards, departments, officers, agents and persons within the State, except departments, officers and agents of the United States not appointed, designated or detailed under the authority of the selective service law, shall be under the direction and supervision of the governor.[58]

The terms of the act furthermore authorized the President to utilize the services of any officers of the states[59] either directly or through appointment by the governor under presidential regulation.[60] For instance, state adjutants-general were designated state draft executives by executive order. As the problems of administration became more numerous and more intricate, the federal government provided each state adjutant-

[56] *Second Report of the Provost Marshal General on the Operations of the Selective Service System* to Dec. 20, 1918, Ch. X, p. 262.

[57] MacDonald, A., "Governmental Relations in National Defense", MS, Bureau of Public Administration, University of California, p. 170.

[58] Selective Service Regulations, Sec. 27, quoted MacDonald, *op. cit.*, p. 176, and *Second Report of the Provost Marshal General, op. cit.*, p. 265.

[59] It must be remembered that national guardsmen are in the service of the state rather than of the federal government until assimilation to the United States Army. Fekete *v.* City of East St. Louis, 145 N. E. 692 (1924). *Cf.* also Lowe *v.* State, 201 S. W. 986 (1918); Houston *v.* Moore, 5 Wheat. 1 (1820).

[60] Sec. 6.

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general with an assistant executive officer, appointed by the President but on recommendation of the state governor, and paid entirely with federal funds.[61] State officials were also utilized when each governor appointed government appeal agents,[62] to present the viewpoint of the government in the hearing of all cases of those discharged on account of dependency.

There was obviously great decentralization within each state, for the state headquarters were in the state capital, the local boards, and the legal advisory boards and the government appeal agents scattered throughout the state, the medical advisory boards located so as conveniently to serve several local boards, and the district boards established in each federal judicial district. There were 192,688 employees who functioned directly under state superiors while the office of the Provost Marshal General, in charge of the federal operation of the act, had only 429 employees throughout the states.[63] In order to attempt to correlate so completely decentralized a system, thirteen men skilled in the application of the law were given a course of training in Washington and then assigned to different sections of the country to examine the operation of the state systems and to do everything possible to improve the state efficiency, but the armistice soon deprived them of their task.[64]

The idea of the decentralized administration of the Selective Service Act was developed in connection with the selection of personnel for the Civilian Conservation Corps. The depression afforded little time, nor was it considered advisable, to set up a new national organization for the selection of the 250,000 men who were to work in the C.C.C.[65] The executive officer of each state relief organization was appointed as a representa-

[61] MacDonald, *op. cit.*, p. 172.

[62] Nearly 47,000 were appointed. MacDonald, *op. cit.*, p. 172.

[63] *Report of the Provost Marshal General, op. cit.*, p. 252. *Cf.* also p. 266.

[64] MacDonald, *op. cit.*, p. 178. MacDonald concludes that "such extreme decentralization would almost certainly have produced complete chaos if the exigencies of a great national crisis had not united many conflicting groups and interests."

[65] Executive Order of April 5, 1933.

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tive of the federal Department of Labor to be a "state director of selection" to break down the quota of the state into equitable local quotas and to delegate the actual selection of the men to the local relief or public welfare agency under his jurisdiction. Here, however, in contradistinction to the practice under the Selective Service Act, the Department of Labor prescribed uniform standards of eligibility.[66] After the recruits were selected, the Army assumed administrative control under the technical supervision of the Departments of Agriculture and the Interior.

2. *Authorization by Federal Administrative Action*

The enforcement of prohibition demanded the coöperation of all forces concerned.[67] President Coolidge seized both federal and state horns and authorized coöperative activity between federal and state officials.

The Grant executive order was so completely amended as to be virtually repealed. By that reversal of policy, state officers could then be appointed at a nominal rate of compensation as prohibition officers of the federal Treasury Department "in order that they may more efficiently function in the enforcement of the National Prohibition Act . . . except in those States having constitutional or statutory provisions against State officers holding office under the Federal Government."[68]

[66] *Two Years of Emergency Conservation Work* (Civilian Conservation Corps) April 5, 1933 – March 21, 1935, Based Upon Reports Prepared by Robert Fechner, Director of Emergency Conservation Work, the Four Departments Cooperating in the Program, namely, War, Interior, Agriculture, Labor and Veterans' Administration (mimeographed), p. 2.

[67] "The federal prohibition authorities have admitted there could be no effective federal enforcement without state cooperation."—*Report of National Commission on Law Observance and Enforcement of the Prohibition Laws of the United States*, Jan. 7, 1931, p. 43.

[68] Executive Order No. 4439 (amendatory), May 8, 1926. *Cf.* Hart, James, *loc. cit.*, p. 86; Chamberlain, J. P., "Enforcement of the Volstead Act Through State Agencies", X *American Bar Ass'n Jour.*, p. 391; Wheeler, Wayne B., "Use of State Agencies in Aid of Discharge of Federal Functions", XC *Central Law Jour.*, p. 222; Wigmore, J., "The President, The Senate, The Constitution and the Executive Order of May 8, 1926", XXI *Illinois Law Rev.*, p. 142; I Willoughby, W., *op cit.*, p. 121.

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In view of the absence from the Constitution of any express or even implied prohibition against the simultaneous holding of a federal and state office and in view of the general executive power of the President, the road to the issuance of such an order had seemed constitutionally clear. But the winds of the controversy over prohibition blew up into a storm which broke over the head of President Coolidge. The legality of his action was even considered by a special subcommittee of the Senate Committee on the Judiciary, which properly upheld the President as "entirely within his rights."[69] His order was in no sense mandatory; it merely indicated that he no longer forbade the appointment of state officers to enforce the federal prohibition laws. Furthermore, the state officials were free to accept or refuse appointment[70] as prohibition officers of the federal Treasury Department, so their discretion was not at all impeded. The discussion raised important questions concerning joint activity between federal and state officials. For example, civil service standards were not applied to prohibition personnel. So when it was proposed[71] to place that personnel under the civil service, objections were raised because of the difficulties which were likely to ensue from applying civil service standards to state officials enrolled as prohibition enforcement officers.

The storm was, however, no more than a tempest in a teapot, not only because state officials could refuse to accept the rôle of prohibition officers but also because few state officials were ever appointed as federal officers. The less formal administrative coöperation of joint raids and seizures proved less cumbersome.[72]

[69] *Cf. Congressional Record*, 69th Cong., 1st Sess., pp. 10,950-10,951 for discussion of the work of this subcommittee. For further discussion, *cf. ibid.*, pp. 9771-3, 9848, 9855, 9901-9, 9928-9, 9936, 9989, 10,014, 10,050-4, 10,070-3, 10,097-8.

Text of majority report of Senate Committee on the Judiciary in *U. S. Daily*, June 9, 1926, at p. 6, col. 2; minority report, ibid., June 10, 1926, at p. 10, col. 2.

[70] A definite act of appointment was required under the order.

[71] H. J. Res. 265, 69th Cong., 1st Sess., May 25, 1926. *Congressional Record, loc. cit.*; p. 10,058. The resolution was reported back adversely from the Committee on the Judiciary on June 10, 1926. *Ibid.*, p. 11,122.

[72] Britt, J. J., in Report of the Round Table, etc., *op. cit.*, p. 429. *Cf., infra*, pp. 263-265, for discussion of joint raids.

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The prolonged depression has stimulated important new developments in the direction of joint activity. The ill-starred National Industrial Recovery and Agricultural Adjustment Acts provided that the President might utilize state officers and employees and, with the consent of the state, "prescribe their authorities, duties, responsibilities and tenure, and, without regard to the Classification Act of 1923, as amended . . . fix the compensation of any officers and employees so appointed."[73] A number of states agreed to coöperate and provided by statute for the governor's consent to presidential utilization of state officers in carrying out the provisions of the law.[74]

Executive action under the National Industrial Recovery Act furthered this policy of joint action by federal and state officials which had been encouraged by the Coolidge executive order. The President permitted employers to make use of industrial homeworkers, despite code provisions to the contrary, if a certificate were obtained for each home from a state agency designated by the federal Department of Labor and in accordance with instructions of that Department.[75] These instructions[76] specifically stated that the provisions under which

[73] 48 Stat. L. 195, Title I, Sec. 2 (a); A.A.A. (48 Stat. L. 31).

[74] Cal., Ch. 1037 and Ch. 1039, Laws of 1933; N. J., Ch. 372, Laws of 1933; N. M., Ch. 18, Laws of 1934; Ohio, House Bill No. 705, Laws of 1933; N. Y., Ch. 783, Laws of 1933; S. C., House Bill No. 1701, 1933; Va., Senate Bill No. 19, Laws of 1933; Wash., New Laws, 1933, p. 115; W. Va., New Laws, 1934, p. 79; Wis., Ch. 476, Laws of 1933; Wyo., House Bill No. 29, 1933; Ill. House Bill No. 162, IIIrd Spec. Sess., 1934; Colorado, House Bill No. 67, 1934.

For discussion of these state acts, *cf.* Clark, Jane P., "State Recovery Acts and States Codes", *American Bar Ass'n Jour.*, June 1934.

[75] Executive Order 6606 F, May 15, 1934. The order had no effect upon industries which did not prohibit homework. A similar executive order was issued on June 27, 1934, stating that apprentices might be employed at lower wages or longer hours than those prescribed for an industry, if a state agency designated by the federal Department of Labor issued a certificate for employment in accordance with an apprentice training plan of the state agency.

[76] *Instructions for Issuance of Certificates Permitting Home Work in Special Cases Under the NRA Codes Under Executive Order of May 15, 1934*, U. S. Department of Labor, Secretary's Committee on Minimum Wage, June 1, 1934. A list of state authorities designated by the federal Department of Labor was issued on September 12, 1934.

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certificates were to be issued were not to supersede more stringent state regulations affecting industrial home work, sanitary regulations, wages, hours, etc.

It is not entirely clear whether or not state officers may be compelled against their will or that of a state government to exercise the authority conferred upon them by federal authorization. The consensus of opinion, however, seems to be that the federal government has no power to compel such action [77] and that state officers may legally refuse to exercise the federal authority.[78] Their oath to support the Constitution does not bind state officers to perform federal functions.

> . . . To take an oath to support the Constitution against enemies threatening with destruction the system which it establishes is quite a different thing from taking the oath to obtain affirmative grants of power to carry on federal work. The word "support" should be interpreted to mean "defend" and "adhere to" rather than to do the work of the national government. Any other view would make it possible to place the burden of administering federal laws on the states.[79]

II. *State Authorization*

1. *By State Legislation*

A state may not, as we have seen, be compelled against its will to offer the coöperation of its administrative officials with the federal government. When a state proffers its aid, coöperation may take several forms, ranging from the strictly formal to the informal.

First of all, joint activity may be required by state law. The state legislature of California has charged the state Department of Institutions "with the duty of cooperating" with the federal immigration authorities in arranging "for the deportation of alien public charges now confined or afterward ad-

[77] Field, O. P., "States Versus Nation and the Supreme Court", XXVIII *Amer. Polit. Sci. Rev.*, April 1934, p. 240.

[78] Prigg *v.* Pennsylvania, 15 Pet. 539 (1842). Here the Fugitive Slave Law of 1793 (Ch. VII, IInd Sess. Cong., Feb. 12, 1793) was involved.

[79] Field, O. P., *loc. cit.*, p. 241.

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mitted to any state hospital, the Whittier State School, the Preston School of Industry or the California School for Girls".[80] The wide variations in procedure between states in reporting cases for deportation to the federal government show the various extremes of coöperation—or lack of it. In some states, the law requires that all aliens ill in state hospitals or sentenced to state prisons must be reported to the federal immigration service by the state; in other states it is merely the practice to report such cases, while in still others it is necessary for federal inspectors to visit state institutions and themselves ferret out deportable aliens.[81]

C. METHODS OF JOINT ACTIVITY

I. *Deputization of Officials and Employees to Aid in the Administration of Federal and State Law*

1. *Of State Officials to Aid in the Administration of Federal Law*

In numerous instances of congressional authorization of state agencies to perform federal functions a state official is given federal commission or deputization to act on behalf of the federal government. Here the difficulties and problems which arise are chiefly those of policy rather than law.

Instances of this type of joint activity are found chiefly where the respective jurisdictions of the state and federal governments approach each other in respect to the same subject matter. Deputization may be used to prevent duplication and secure the benefit of coöperative resources in enforcement. Federal and state activities concerning food and drugs are divided only by the thin and wavering line between "inter-

[80] Stats. of Cal. 1923, Ch. 85, Sec. 1, amended 1927, Ch. 403, Sec. 6. *Cf.* also Cal. Pol. Code 219; Cahn, F., "Public Welfare in California", MS, Ch. VIII, p. 54; Wood, S., "State Activities for the Control and Welfare of Immigrants in California, with Special Emphasis Upon Cooperation with Federal Agencies", M.A. Thesis (unpublished), University of California, 1933, p. 142.

[81] For detailed discussion, *cf.* Clark, Jane P., *Deportation of Aliens*, p. 328. The Immigration Act of 1917, Sec. 23, requires such visits on the part of the immigration officials.

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state" and "intrastate" commerce. The federal Pure Food and Drugs Acts [82] provide for the collection of samples of misbranded or adulterated foods not only by authorized agents of the Food and Drug Administration of the Department of Agriculture but also by "a health, food or drug officer of any State . . . commissioned by the Secretary of Agriculture for this purpose" [83] or by his agent, if so commissioned. These deputized agents who obtain satisfactory evidence of the violation of any of the food and drugs acts either may present that evidence direct to the proper United States district attorney for action under federal law or may turn it over to federal officers of the Food and Drug administration.[84]

Commissions to state officers are issued through the Division of State and City Coöperation of the Food and Drug Administration of the Department of Agriculture. This Division

> is a special agent for the State or municipal official. It acts as a clearing house for all matters dealing with food and drug control, so that all the officials of the country may be kept informed. . . . It furnishes regularly information and assistance to State and municipal officials.[85]

[82] Act of June 30, 1906 (34 Stat. L. 768, as amended by act approved August 23, 1912 (37 Stat. L. 416); by the act approved March 3, 1913 (37 Stat. L. 732); by the act approved March 4, 1913 (37 Stat. L. 736); by the act approved July 24, 1919 (41 Stat. L. 271); by the act approved July 8, 1930 (44 Stat. L. 1019); by the act approved June 22, 1934 (48 Stat. L. 1204).

[83] *Regulations for the Enforcement of the Federal Food and Drugs Act,* 10th Revision, Food and Drug Administration, Service and Regulatory Announcements, Food and Drug No. 1, issued Nov. 1930, U. S. Department of Agriculture. Regulation 3. Similar provisions are found in the Insecticide Act of 1910, 36 Stat. L. 331. *Cf. Regulations for the Enforcement of the Insecticide Act of 1910,* 3rd Revision, issued Oct. 1918, U. S. Department of Agriculture. *Cf.* esp. Regulation 2, "Collection of Samples", and 7, "Report of Violations by State Officials." *Cf. Directory of State Officials Charged with Enforcement of the Food and Drug Law,* Corrected to March 1936. U. S. Department of Agriculture.

[84] Regulation 5, (c) and (d).

[85] Alsberg, C. L., "Ten Years of the Food and Drugs Act", *Annual Report of the Secretary of Agriculture* (1917), pp. 210-211, quoted Hayes and Ruff, "The Administration of the Federal Food and Drugs Act", I *Law and Contemporary Problems,* No. 1, Dec. 1933, p. 16.

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These commissions, when issued in the name of the Secretary of Agriculture, are accompanied by a letter stating that the commission is to be in force only for the period in which the recipient holds his present office or until revoked. Such commissions are usually given to the heads of state Departments of Agriculture or Health.[86] Nearly all such state officials are so commissioned, save in states where the lack of enforcement of state food and drug acts necessitates entire federal enforcement of federal law.

Interstate game supervision is a good illustration of a field where the federal government has power to act but does not wish to exercise its rights and so has, to a large extent, withdrawn.[87] It has therefore deputized state game wardens as deputy federal game wardens for the administration of the Lacey Act[88] and of the Migratory Bird Treaty Act.[89] So these deputized state wardens are under the general superintendence of their own state and also of the Division of Game and Bird Conservation of the Bureau of Biological Survey of the United States Department of Agriculture. As this Bureau has, throughout the country, only twenty-seven federal agents, each of whom covers the territory of two states and works in coöperation with the deputized state wardens, the state burden is heavy.[90]

This deputizing of state officials to aid in the administration of federal law is a common procedure, whether the federal government withdraws from the field of administration and to all intents and purposes turns the matter over to state officials,

[86] Conversation with W. S. Frisbie, Chief of Office of Coöperation, Dec. 11, 1934.

[87] *Cf.* Bureau of Biological Survey, Reprint of Misc. Pub. No. 88, U. S. Department of Agriculture; Connery, Robert H., *Government Problems in Wild Life Conservation* (1935), esp. Chs. III-IX; Holcombe, A., "The States as Agents of the Nation", *loc. cit.*

[88] 31 Stat. L. 187.

[89] 40 Stat. L. 755. *Cf.* Chamberlain, J., "The Migratory Bird Treaty Decision and Its Relation to Labor Treaties", X *American Labor Legislation Review*, p. 131.

[90] *Cf.* Connery, *op. cit.*, pp. 223-224.

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or whether the federal government continues its activities side by side with the officials of the states.

2. *Of Federal Officials to Aid in the Administration of State Law*

The reverse side of the picture is the deputizing or commissioning of federal officials by states to aid in the administration of state law. For instance, appointment of federal forest officials as state deputy fish and game wardens is a common practice. Such deputization may also indirectly aid in the administration and enforcement of federal law,[91] for the federal constitutional guarantees in regard to search and seizure [92] may effectively prevent the enforcement of federal law by its own officials.

Under acts of Congress,[93] forest officials have authority to arrest upon warrant any person charged by a legally proper complaint with a violation of federal laws or regulations in the national forests. For state offenses under state law, such as that of California, the same officers have authority to arrest on warrant only after having been appointed deputy state fire or fish and game wardens.[94]

Deputization of federal officials to act in the capacity of administrators of state law is a common procedure. Practice, however, varies in different sections of the country. In the Eastern District of the National Forest Service, a few of the states authorize federal rangers to act as state fish and game wardens, while in the vast expanse of forest reserves and national parks on the Pacific Coast and in the states of the Rocky Mountain Region, practically all the permanent field employees and some of the regional office staff of the National

[91] *Cf. infra*, pp. 263 *et seq.*

[92] IV Amendment.

[93] 33 Stat. L. 700; 33 Stat. L. 872.

[94] For offenses committed in their presence, these federal forest officials have authority to arrest without a warrant for either federal or state offenses, but for offenses not committed in their presence they may arrest a person in advance of an indictment only if it is absolutely necessary to prevent escape.—*Law Enforcement in California National Forests*, California District, U. S. Forest Service for California, 1919, p. 6. U. S. Department of Agriculture. *Cf. ibid.*, 1926. *Cf.* also p. 74.

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Forest Service are formally appointed as state fish and game wardens.[95]

The same federal official may even be deputized by more than one state department to aid in administering its law. For instance, in California the same United States forest ranger may be appointed to act in the capacity of fire warden under the state forest and fire laws [96] and may in addition be appointed Deputy Sanitary Inspector of the California State Department of Public Health, and also Deputy Fish and Game Warden of the State Department of Natural Resources. He therefore has authority to enforce the regulations of all those departments in so far as they may apply within the national forests.[97]

Another illustration of formal appointment is found in the state law of Texas which authorizes the negotiation of an agreement between the state Department of Agriculture and the United States Department of Agriculture.[98] This agreement in turn provides that:

> The State Commissioner of Agriculture must appoint the federal supervising inspector as the state supervising inspector and pay a major portion of his salary. This supervising inspector must license all state inspectors and the U. S. Department of Agriculture may suspend any inspector's license. Subsistence and travel expenses of the federal supervising inspector and the operating expenses of the federal automobile operated by him must be paid by the State.[99]

[95] This includes qualified short-term appointees. *Cf.* Parker, A. E., "Policing State and Federal Parks", M. A. Thesis (unpublished), University of California, 1931, pp. 95 and 110.

[96] Forest Fire Protection Act, Stats. 1919, Ch. 176, p. 262; Stats. 1931, Ch. 192, p. 325; Stats. 1931, Ch. 788, p. 1642, Sec. 3 (a).

[97] Letter from M. H. Davis, Acting Assistant Regional Forester, United States Department of Agriculture, Forest Service, California Region, Dec. 26, 1935.

[98] Texas, General Laws, 43rd Legislature, R. S. (1933), p. 551.

[99] *Second Biennial Report of the State Auditor and Efficiency Expert*, "Report on the Department of Agriculture", 1932, Vol. XVIII, pp. 17-20, quoted, Burdine, J. A., *National–State Cooperation With Special Reference to Texas* (Arnold Foundation Studies, 1935), pp. 20-21.

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Federal officials deputized to administer and enforce state law may or may not be paid by the state government for that aid. The California State Fish and Game Code allows payment for the discharge of state obligations,[100] but actually federal officials commissioned as special deputy state game wardens serve without compensation from the state.

In many instances, federal officials may be deputized to act as state officials only if they give bond. For example, in the Intermountain Region of the National Forest Service, which includes the states of Wyoming, Idaho and Utah, the forest rangers may be appointed as state fish and game wardens only if they give bond to the states,[101] whereas in the Southwestern District of the same organization, the states do not require bond.[102]

Different requirements may prevail within the same state in regard to bonds for officials acting in similar capacity. Thus federal employees of the Tennessee Valley Authority in the Norris Dam area are commissioned as deputy sheriffs of the counties in which the property of the T.V.A. is located, and as a prerequisite to such deputization, are required to carry corporate bonds protecting the sheriff against civil liability for any acts of the T.V.A. deputies.[103] On the other hand, the

[100] Fish and Game Code, Division I, Ch. 2, par. 20, Cal. Department of Natural Resources, Sacramento, 1934. *Cf. How the National Forests of California Benefit the State*, U. S. Department of Agriculture, Miscellaneous Publication No. 82, 1930.

[101] Laws of Wyoming, 1921, Ch. 83, Sec. 15 requires $3,000 bond; Idaho, Laws of 1919, Ch. 65, Sec. 2 requires $5,000 bond; Utah, Laws of 1923, Sec. 3, p. 47 requires $10,000 for the fish and game commissioner of the state, the chief deputy, $5,000, and other deputies "except special deputies acting as such without compensation from the state", $1,000. The state pays the premiums out of the fish and game fund.

[102] *Cf.* California Fish and Game Code, Division I, Ch. 2, par. 21: "Every deputy appointed to enforce the provisions of this code . . . receiving a salary of less than $25 a month, except employees of the federal government . . . shall execute an official bond. . . ." *Cf.* also Parker, A. E., *op. cit.*, p. 110, and letter from Dana Parkinson, Assistant Regional Forester, Intermountain Region, to Professor August Vollmer, University of California, quoted *ibid.*

[103] Ziegler, A., "Overlapping of State and Federal Criminal Jurisdiction over T.V.A. Properties in Tennessee. Practical Administration of Criminal Law and Protection of Property", unpublished Memorandum, Sept. 26, 1935.

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neighboring county of Hardin does not require deputies to carry bond for the performance of the same duties.[104]

II. *Agreements for Joint Activity*

1. *By Federal Statutory Provision*

Another means of preventing conflict of jurisdiction and authority, with the concomitant duplication of personnel and governmental facilities, and the consequent lack of efficiency and economy in administration, is by agreements or contracts for joint activity between federal authorities and those of one or more states.[105] If the duties and functions of each set of officials are outlined in agreements, duplication of work may be prevented and the advantage of joint facilities attained.

Such agreements may be entered formally by definite authorization of federal or state law or rule, or may be negotiated informally by administrative discussion. There are numerous illustrations. For instance, the Secretary of the Interior is authorized "to enter into a contract or contracts with any State or Territory . . . for the education, medical attention, agricultural assistance and social welfare . . . of Indians in such State or Territory. . . ." [106] Accordingly, an agreement was made with the state of California [107] providing for the coöperation of the federal and state governments in the education of the Indians: The federal government appropriated a sum necessary for the supervision and general direction of the program. It was provided that the contract remain in force for one year.

The federal government likewise provided by statute for an agreement between the Federal Bureau of Prisons of the Department of Justice and the proper state authorities for the boarding of federal prisoners.[108]

[104] As of Sept. 26, 1935.

[105] For other aspects of federal-state agreements and contracts, *vide* POLITICAL SCIENCE QUARTERLY, Vol. L, pp. 502-524, Vol. LI, pp. 36-60.

[106] Act of Congress, approved April 16, 1934.

[107] Authorized by Act of the state of California, approved April 13, 1927.

[108] 46 Stat. L. 325. *Cf. infra.*

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The Bureau of Agricultural Economics of the United States Department of Agriculture had by the close of 1934 approximately 400 such agreements in effect between its various divisions and either state departments of agriculture or the agricultural extension services of state or land grant colleges.

There is no limit to the number of states that may join in an agreement with the federal government. For instance, a contract was entered in the area of the Tennessee Valley Authority by which it agreed with the seven states of Tennessee, Virginia, North Carolina, Kentucky, Georgia, Alabama and Mississippi and the United States Department of Agriculture to develop a "Joint Program of Agricultural Development and Watershed Protection Through Improved Fertilization." [109]

2. *By State Provision*

The states in turn may make statutory provision for such agreement. Thus California permits the state forester to

> . . . enter into agreements with the federal government, under such terms as he deems advisable or as may be provided by law, and renew, revise or terminate such agreements, for the purpose of maintaining a fire patrol system, for the prevention and suppression of any forest fire . . . providing that the expenses incurred by the terms of said agreement shall be paid from the appropriations or funds available for forest fire protection.[110]

These agreements, whether authorized by statute or administrative action, tend to develop certain general principles, such as specification of the legal authority for action, the major principles governing the mutual activity, including the objectives sought to be attained, the responsibility and work of the respective federal and state units of government, the dates of effectiveness and termination of the agreement, with possibilities for amendment,[111] and, last of all, control over personnel.

[109] *Cf.* Art. I, par. 2 of Contract, which was signed July 1935. Previous to this agreement, various specific agreements had been signed.

[110] California Fire Protection Act, Stats. 1919, Ch. 176, p. 262; Stats. 1931, Ch. 192, p. 325; Stats. 1931, Ch. 788, p. 1642, Sec. 2(a). Forest and Fire Laws, 1931-1933. State of California, Department of Natural Resources, Division of Forestry, 1933.

[111] These are often informally made, even by letter.

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It is important that the dates of duration of a contract be provided. Thus the standard contract between the T.V.A. and a state health department within the area provides that its terms are to be "for the fiscal year ending June 30, 1936 and thereafter from year to year until terminated by notice in writing to either party to the other thirty days before the end of any fiscal year." [112] Furthermore, the agreement may be terminated and cancelled by either party if ninety days' notice is given in writing.[113] Last of all, if the state department of health fails to perform what it undertakes by the terms of the agreement, the Authority on its side is thereby relieved of all liabilities and obligations imposed upon it under the terms of the agreement.[114]

The crux of any administration lies in its personnel. Federal-state agreements may provide for appointments to be approved by both federal and state authorities and for such appointed personnel to be jointly paid and controlled. Thus, the states in the Tennessee Valley Territory in entering contracts with the Authority for joint activity in public health must agree "to employ for the performance of the services contemplated by this contract only such persons as are jointly approved by the Department and the Director of Health of the Authority." [115]

States may not subject joint appointments to political pressure. In agreements of the Federal Bureau of Agricultural Economics with various state departments it is stated that states may not dismiss any joint employee without coöperation of the federal government. Therefore a change in a state political machine does not change the joint appointment. States have on occasion dropped such an employee and, if the employee is under the federal civil service, the federal government has then assumed full financial responsibility. In such cases, the

[112] Tennessee Valley Authority and . . . Contract for a Program of Coöperative Health Work for the Protection of the Health of Employees of the Authority and of Local Communities from Health Hazards Created by Operations of the Authority, Sec. 7.

[113] Sec. 9. [114] Sec. 8.

[115] Standard Contract Form, par. 4.

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federal authorities may threaten, or actually discontinue coöperation. Thus in Oklahoma, coöperation was discontinued, resumed again and once more discontinued under an agreement with the Division of Crop and Livestock Estimates of the Bureau of Agricultural Economics.

Agreements of the Bureau of Agricultural Economics illustrate the various ways of jointly using personnel:

First, in the research work of such different divisions of the Bureau as the Division of Land Economics, Farm Management, Agricultural Finance, Crop Reporting, Statistics and Historical Research, agents are appointed jointly by the states and the federal government and are jointly paid by the two sets of governments.[116] For instance, the 1934 agreement between the state of California and the Division of Crop and Livestock Estimates of the Bureau of Agricultural Economics specifies the salary schedule as follows:

	Federal Salary	*State Salary*	*Joint Salary*
Senior Agricultural Statistician	$4,500	$ 300	$4,800
Senior Crop and Livestock Estimator	1,760	3,040	4,800
" " " " "	4,600	0	
Clerk	1,760	0	
Etc.			

Again, in Illinois by federal-state agreement the Senior Agricultural Statistician is paid annually $4,988 by the federal government and $12 by the state.[117] Salaries may be equally divided between the federal and state authorities, but in other cases the balance of amounts of payment may swing heavily in either direction, depending on a particular agreement. The federal government, nevertheless, usually retains sufficient control over salaries to cover the retirement deductions for federal employees.

[116] As of December 11, 1934, there were 61 such joint agency appointments but during the preceding year the number had reached as high as 165. Statement of Mr. Hughes, Personnel Manager of the Bureau, Dec. 11, 1934.

[117] In other words, the state salary of one dollar per month suffices to allow him to remain a regular state employee and so use state travel funds.

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As the employees of the Bureau of Agricultural Economics are under the classified civil service, questions arise concerning the status of these jointly paid employees. A coöperative agreement of the Bureau provides that any federal employee with a classified federal civil service appointment does not lose his civil service status under a coöperative arrangement. However, if a person is appointed on a joint but temporary basis for a particular piece of work, a special provision [118] of the civil service rules of the Bureau allows him civil service status but no transfer.

Because of the depression, a difficulty was found in the arrangements for salary cuts. The federal government first provided for a 15% cut in the remuneration of its employees [119] and suggested a similar cut in state salaries to be approved by joint agreements, but this suggestion was not required to be followed. States often cut their portions of coöperative salaries as much as 50% or 60%, while no provision could be made under the arrangement for a proportionate federal increase. The situation, of course, varied from state to state. In some states, the financial situation was so serious that the state was unable or unwilling to pay any portion of its share of salaries of joint employees. In Pennsylvania, the state payments toward joint salaries fixed by federal-state agreements under the Bureau remained unpaid for two years. The federal government finally succeeded in getting warrants for state payment, but as its warrants did not constitute a prior lien, they were not paid ahead of commercial warrants. So delay in payment to the joint employees was inevitable.

A second type of joint use of personnel by state and federal governments under the Bureau of Agricultural Economics is found in provision by agreement for the appointment of state officials as federal "collaborators". Here the state government pays the entire salary of an employee but the Secretary of Agriculture gives the employee a federal commission. In such cases the initiative and responsibility for projects rest pri-

[118] Agreement, Schedule A.

[119] 47 Stat. L. 382.

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marily with the state but the federal government usually gives such facilities as clerks, tabulating machines, etc., to the collaborating state official. An important reason for such appointments is the use the state official gets of the federal franking privilege in the mails. State Commissioners of Agriculture are usually given such appointments and they then coöperate in different types of activity. Often, for instance, they rent the leased wire privilege from the federal government so that their educational work may be aided by the National Market News Service.[120]

A third type of coöperative use of personnel under agreements of the Bureau of Agricultural Economics is found in the incorporation of state personnel in the federal-state inspection service established under the United States Grain Standards Act.[121] Its primary purposes are to establish uniform standards of quality and condition for grain use throughout the United States and in foreign commerce and to license grain inspectors to apply these standards and to entertain federal appeals from inspections performed by licensees, upon request of any interested party. The inspectors are licensed by the federal government and may be employees of states, grain exchanges or boards of trade. The fees for inspection are collected by the state, and the state in turn pays the federally licensed inspectors a fixed salary from those fees. The inspectors are therefore state employees operating under a federal license, payment for which comes from the state. However, the supervisor of such licensed employees is usually a full federal employee.[122]

Agreements may provide for joint responsibility of personnel, as in the contract between the Division of Crop and Livestock Estimates of the Bureau of Agricultural Economics and the State of Illinois:

[120] *Report of the Chief of the Bureau of Agricultural Economics*, 1933, p. 13.

[121] 39 Stat. L. 482.

[122] This situation should not be confused with federal inspection for which the states may pay. Thus, for instance, federal inspectors investigate hay shipped in interstate commerce and are paid by the state for that work at a per hour rate, but such inspection is in no sense state inspection.

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> All Federal employees shall be responsible in so far as they are acting in a Federal capacity to the Chief of the Bureau of Agricultural Economics, United States Department of Agriculture, and such individuals as may hold appointments from the State of Illinois shall be responsible to the Director of the Illinois Department of Agriculture. Individuals with Federal appointments shall submit to the Chief of the Bureau of Agricultural Economics such reports as he may require. All Federal employees shall be subject to the Administrative, Fiscal and Property Regulations of the United States Department of Agriculture in so far as they are applicable to them as employees of the Department.

The balance of responsibility as well as control may swing the one way or the other in agreements, for, as already indicated, much depends on the respective bargaining powers of the state and the federal officials. One unit of government may pay larger proportionate amounts than the other and may retain the primary allegiance of officials by this or other means. Legal responsibility is not necessarily tantamount to actual responsibility. Thus in the work of the joint plant quarantine service in San Francisco, although approximately 80% of the work constitutes the enforcement of federal law and regulation,[123] nevertheless the selection and control of personnel are primarily a state function. In 1931, the pay roll of the Plant Quarantine Service in San Francisco totalled $43,000 of which the state paid $41,200 and the federal government $1,800.[124]

Federal or state authorities may by agreement provide additional personnel temporarily for the other as circumstances warrant. For instance, under the joint program of malaria control between the Health Section of the Tennessee Valley Authority and the Alabama State Department of Public Health, it was arranged that laboratory service for diagnostic,

[123] Hurt, P., "Interrelationships of the Agencies Controlling San Francisco Bay", unpublished Ph.D. thesis, University of California, 1931, p. 69.

[124] The federal government also contributed some furniture and equipment and paid supplies to the amount of $100 per year. The officers of the plant quarantine station received $5 per month, while the supervisor received $125.

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survey and control purposes be organized through the established laboratory service of the State Health Department but, that the facilities for the existing services would be supplemented by facilities provided through the T.V.A. "as and when the laboratory load and special needs warrant such supplements." [125]

Other types of contract may involve the use of facilities of one government by the other, rather than for joint activity in personnel. Thus the federal Bureau of Prisons of the United States Department of Justice is now required by act of Congress to make a contract for board of federal prisoners in county jails and in that contract to insist on certain minimum essentials for federal prisoners:

> . . . the Director of the Bureau of Prisons may contract for a period not exceeding three years with the proper authorities of any State . . . for the imprisonment, subsistence, care and proper employment of any person held under authority of any United States statute: Provided, that such Federal prisoners shall be employed only in the manufacture of articles for the production of or supplies for, the construction of public works for the maintenance and care of the institutions of, the state. . . . The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and the quality of subsistence.[126]

Subject to those limitations, the prisoners confined in state institutions are under the exclusive control of the officials having charge of the institution,[127] although federal officials reserve the right of visit. In the agreement between the state of California and the federal government for the education of the

[125] *Joint Program, Suggested Activities in Reference to Malaria Control*, p. 5.

[126] 46 Stat. L. 325.

[127] *Agreement for the Support of Federal Prisoners*, Art. I. *Cf.* also Memorandum to Sheriffs, Jailers and County Officials, Dec. 23, 1932, U. S. Department of Justice, which lays down (1) minimum standards necessary before the federal government will consider the use of a jail, and (2) suggestions to sheriffs requesting advice. *Cf.* also, Circular 2124, U. S. Department of Justice, attached to each contract.

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Indians, utilization of federal buildings and equipment is permitted.[128]

There are types of agreement which involve no financial lever on the part of either the federal or state governments. For instance, beginning in 1914, an agreement was made between the California state Americanization officers and the federal naturalization officers concerning a "diploma method of naturalization."[129] By it, an applicant for citizenship, on satisfactory completion of a specified course of citizenship in a local school, is given a diploma by that school. This diploma, when countersigned by a federal naturalization examiner, who has passed on the qualifications of the applicant, is acceptable to federal and state judges in California as satisfactory evidence of completion of the requirements of citizenship, in lieu of open examination of the applicant in court.[130]

III. *Informal Method of Joint Activity*

In any administrative organization, a certain amount of interplay must be allowed at the joints so that the machinery may function smoothly. Such interplay is found in the great amount of informal coöperation between federal and state officials, authorized by statute or administrative regulation or developed in the give and take of the daily routine.

It is possible that one unit of government may borrow officials from the other. For instance, on the request of the state health officer, one or more members of the federal health personnel may be assigned to the state health department of a state making a request, usually to help in the development of some particular activity in the state health service.[131] In the Tennessee Valley Authority, the Authority has borrowed personnel from

[128] Signed Sept. 1, 1934.

[129] *First Biennial Report*, Cal. State Commission of Immigration and Housing, 1914-1915, p. 100. *Cf.* Cahn, F., *op. cit.*, p. 82, and Wood, S., *op. cit.*, p. 154.

[130] *Naturalization Rules and Regulations*, 1932, Rule 1, Subdivision N, par. 1, Bureau of Naturalization, U. S. Department of Labor.

[131] Smillie, W. G., *Public Health Administration in the United States* (1935), p. 367.

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the states of Alabama and Tennessee.[132] Federal authorities may voluntarily undertake to aid the states by performing activities on their behalf. The law of California prohibits the exportation of abalone shells from the waters of the state and constitutes such shipment a misdemeanor [133] but makes no provision for administration or enforcement. Nor is there any provision of the United States Customs laws or regulations issued under them which would aid the state in its own protection. Nor is there any agreement between the federal Customs Service and the state of California. Nevertheless, as an act of courtesy, the former enforces the California abalone law in that state, for it accepts no export declaration for a ship unless the exporter has shown conclusive evidence to a customs officer that the abalone was not taken from state waters.[134] In California, too, the Customs Service coöperates with the state in the enforcement of the state plant quarantine law, for the customs inspectors enforce the federal and state laws simultaneously, again as a courtesy to the state.[135]

The picture may be turned the other way. Thus the milk supply for the T.V.A. employees must meet the standards of the United States Public Health Service standard ordinance for federal camps. But as no machinery is provided for enforcement, the Health Division of the Tennessee Valley Authority depends on state officials of the state health department, who informally coöperate by enforcing the ordinance.[136]

A large field of coöperative activity has developed where officials of one jurisdiction lack authority to act. Thus search warrants issued by federal courts are controlled by the restrictions of the federal Constitution which forbids the issuance of warrants except on probable cause, supported by oath or affirmation, and particularly describing the place to be searched,

[132] Interview with Dr. Bishop, Director of Health Division, T.V.A., Knoxville, Tenn., Dec. 30, 1935.

[133] Cal. Penal Code, Sec. 828 ff.

[134] Hurt, P., *op. cit.*, p. 69.

[135] *Ibid.*, p. 30.

[136] There is some slight help from federal engineers. Interview with Dr. Bishop, *cit.* Dec. 30, 1935.

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and the person or things to be seized.[137] Therefore the constitutional insistence on care in the use of warrants has meant that if a warrant is technically deficient in any way, evidence secured under it is inadmissible in any subsequent proceedings. The laws of some states, on the contrary, are not bound by such technicalities[138] and so allow the issuance of a writ on information or belief, with little necessity for detailed information. In some states, even if the warrant itself is defective, the evidence obtained under it is admissible in later proceedings.

The vagaries of prohibition enforcement brought to light the differences between federal and state constitutional guarantees and revealed that state officials could therefore be of use to the federal officials in their thankless task of prohibition enforcement. In other words, evidence could be secured more easily by state than by federal officers and then turned over to the latter.[139] No matter how evidence was obtained, it was acceptable to the federal officers, even though they themselves could not get such evidence. In other words, in most states a violation of the prohibition act could have been proved by evidence which would have been a violation of the IV Amendment to the Constitution if secured by federal officers themselves. Although federal officers could not steal evidence themselves,[140] it was considered legitimate for them to use evidence which state officers had stolen. The result was that in certain jurisdictions, the federal authorities relied almost wholly on state discoveries.[141]

Such dubious coöperative activity has not been confined to the late little-lamented federal prohibition laws but has extended into other fields. Similar problems of search and seizure have arisen in the administration of the deportation laws of the United States. There, too, joint raids have been

[137] IV Amendment: *Cf.* 40 Stat. L. 228.

[138] *Cf.* for example, Nebraska, Laws of 1921, Ch. 156, Sec. 7.

[139] *Cf.* McBain, H. L., *Prohibition, Legal and Illegal* (1928), esp. p. 98.

[140] Burdeau *v.* McDowell, 256 U. S. 455 (1921).

[141] McBain, *op. cit.*, p. 92.

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conducted by federal and state officials [142] with the latter attempting to accomplish on behalf of the former what the federal Constitution prevents.

A recent development in informal coöperation has been going steadily forward, perhaps especially on the federal side. The Federal Bureau of Investigation of the United States Department of Justice was founded in 1908 to investigate offenses against the laws of the United States and to collect evidence in cases in which the United States is or may be a party.[143] The Federal Bureau of Investigation coöperates not only with local law-enforcement officials but with the state police in running down predatory criminals who commit offenses against National and Federal Reserve System Banks.[144] To further its work, the Bureau "has developed services designed to promote cooperation between it and other law enforcement agencies, local, state and international." [145]

Conclusion

The need for coöperation between federal and state administrations, together with need for correlation of their functions, is increasingly evident. Nevertheless the ideal formulae have not yet been developed. It is probable that joint activity will prove to be among them and that the trend toward its use will be an outstanding development of American federalism. To determine whether or not it operates with sufficient administrative effectiveness and economy of effort and of expense to warrant its further development and wider use, requires more extensive information and further exploration of its potentialities.

From the evidence available, it would seem clear that state constitutional inhibitions against joint federal-state activity are

[142] Clark, Jane P., *Deportation of Aliens from the United States* (1931), pp. 326-7; Van Vleck, W., *Administrative Control of Aliens* (1932), pp. 92-5; *Report on the Enforcement of the Deportation Laws of the United States*, National Commission on Law Observance and Enforcement, pp. 55-6.

[143] *Cf. The Federal Bureau of Investigation*, U. S. Department of Justice (1935).

[144] 48 Stat. L. 783.

[145] Address of John E. Hoover, Director of the Federal Bureau of Investigation, Jan. 13, 1936, p. 4 (Government Printing Office, 1936).

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of little value in preventing the evils they were aimed to suppress.

The type of coöperative activity developed under the Selective Service Act, and continued with control more centralized under the Civilian Conservation Corps, offers possibilities for future development. Also, the fact that federal forest officials are so generally appointed as state fish and game wardens may indicate the acceptability of that joint arrangement to both federal and state administrative organizations, and the reason for its further use. On the other hand, formal deputization of such officials if there is no financial bait to lure the other unit of government into coöperative action may not of itself go far toward promoting active coöperation.[146] The method of coöperative activity employed under the N. I. R. A., by which state agencies certified homeworkers under authority of federal administrative orders, also appears to show potentialities. Nevertheless, it clearly indicates the need for adequate state staff to undertake additional administrative burdens.

Formal agreements for joint activity possess the advantages of clarity and definiteness in allocation of functions and responsibility as between the two sets of officials. Such agreements seem particularly valuable if they are made in accordance with statutory standards which are required as a condition of coöperation—and particularly of receiving funds.

Payment to the states by the federal government and vice versa for work done on behalf of the other is a *sine qua non* to prevent already overburdened administrative officials from becoming more overburdened by additional responsibilities and work. If demands made by one unit of government on the other increase, financial provision for the work and in particular for additional personnel must increase. Too often in the illustrations studied, there was apparent need for greater planned coördination and for simplicity of administrative procedure between the two units of government. Yet a plan of

[146] It has already been suggested that state officials of public employment offices "should be commissioned by the Social Security Board so that they may serve as federal representatives as well as state officers." Douglas, Paul H., *Social Security in the United States*, 1936, p. 216.

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joint activity does not necessarily mean that all aspects of coöperation must be formal. Informal activity is of the utmost importance. However, the illustrations examined in this study indicate that a danger of informal coöperation lies in the possibility of using it as a means of accomplishment of what is otherwise not allowable and, consequently, infringing on important individual rights.

Several objections have been raised to this coöperative method. First of all, it is claimed that joint activity places a burden on either set of officials which the pressure of their own work ill allows them to bear. New duties imposed upon them might cause neglect of their existing engagements, particularly where the two are inconsistent. For instance, federal deputization of state officials authorizing them to cross state lines would cause them to be altogether absent from their state posts. It is further claimed that a conflict of loyalties between federal and state duties would destroy the working value of the official to the one if not to the other government. On the political side, it has been hinted that federal appointments to legally forbidden posts in the states might cause a vacation of such great numbers of state offices that state government might conceivably come to an end.[147] Last of all, it has been indicated that joint activity would "break down the last remaining distinction between local and centralized authority."[148]

There are several answers to these objections. Numerous offices may easily be filled by persons holding positions with the other unit of government without any difficulty in discharging the duties of either. Furthermore, where the interrelationship is particularly close in subject matter or territory in which the federal and state governments are acting, joint activity may actually help an official in the performance of his own and primary duties. However, such mutual aid can only be obtained as a result of a definite, clear scheme of joint activity and not as the result of mere bargaining with its resultant lack of clarity

[147] *Cf.* Hart, J., *loc. cit.*

[148] 67 *Cong. Record*, 69th Cong., 1st Sess., p. 9982, Statement of Senator Robinson of Arkansas. *Cf.* also, p. 9906; *vide* Hart, J., *loc. cit.*, p. 102 for discussion of objections to joint activity on the state side.

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of plan and of correlated action. These difficulties are obvious in many of the illustrations examined in this chapter.

There are advantages to a planned and coördinated scheme of joint activity. If properly integrated, it may retard the draining of state officials into the federal service which, to a certain extent at least, may weaken the state services.[149] In many instances, the federal service is more highly paid than those of the states. In 1932, the employees of the federal government received an average salary of $1,897 per year, while those of the states and counties received only $1,373.[150]

But there are other advantages of joint activity. It is not hampered by constitutional obstacles which may be overcome only by circuitous means. It provides a means of securing more uniformity of action while at the same time allowing for local differences. By lessening jurisdictional conflicts it goes a long way towards decreasing many administrative difficulties. If joint activity is developed in accordance with a more definite scheme of federal-state relationship than pertains under the present haphazard arrangements by which such work has often been accomplished, there may develop a means by which may be avoided "the great and unnecessary duplication of state officials by federal officials which perhaps more unconsciously than consciously constitutes . . . one of the principal sources of objection to the exercise of federal power."[151] It also facilitates economy by reducing duplication of effort and governmental facilities. It may provide an important means of aiding

[149] "My temporary structure is more seriously threatened by the fact that most of the members of my staff who are carrying on administrative responsibility are on the civil lists of the Federal Labor Department (chiefly the new Division of Labor Standards)". . . . Memo. of Miss Frieda Miller, Director of the Division of Minimum Wage and the Bureau of Women and Children of the N. Y. State Dept. of Labor, Sept. 15, 1935.

[150] *Better Government Personnel* (1935), Appendix, p. 91. City employees received an average of $1,511.

[151] Dickinson, John, "The States Under the Constitution", Address before the Annual Meeting of the Academy of Political Science, Nov. 14, 1935: (More satisfactory relations between state and federal governments) "could be furthered . . . [by] a far greater employment than at present by the federal government of state officials and state agencies in the exercise of its functions."

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in the solution of the problems created by a constitutional division of powers without disturbance of the federal nature of our government. It might even form an important part of "the new federalism" which, it is possible, "will invite the federal government to use state agencies for the performance of federal functions under federal control with the help of a state civil service with high standards." [152] But that is on the knees of the gods.

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[152] Brecht, Arnold, "Federalism and Business Regulation", *Social Research*, Sept. 1935: "The choice before the states is that of participating in the administration of national standards imposed by the federal government or submitting to federal enforcement of those standards."

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LAW ADVERTISING IN MEDIEVAL MANUSCRIPTS

WE do not usually think of medieval men as much given to, or as proficient in, the arts of self-advertising. But I have discovered a very curious eulogy of two graduates in law from the university of Bologna which would seem self-inspired in several manuscripts of the huge fourteenth-century encyclopedia of Dominicus Bandinus or Domenico Bandini of Arezzo.[1] It occurs at the end of the eighth book on the planets, with whose subject matter it has nothing to do. It is in every way an irrelevant interpolation. I first came upon it in Vatican Latin MS 3121, fol. 53 recto, a manuscript which gives only the first eight books of Bandini's encyclopedia, so that in it our passage comes as an aftermath and addendum. But subsequently I found it in two other fuller manuscripts (Vatic. lat. 2028, fols. 153v-154v, and Vatic. Palatine lat. 922, fol. 161r, col. 1-2) where it occurred as an insertion between books eight and nine of the encyclopedia. Moreover, these two manuscripts represent a posthumous edition of the work by Bandini's son, Laurentius, who defends the work against criticisms which had been made of its style and states that he has published it after submitting it to various competent authorities with the question whether it should be made public or burned. They all urged its publication. While the eulogy of the two young lawyers occurs at the close of the eighth book in these three manuscripts, which are all that I have thus far examined with a view to this particular point, I should not want to assert that it will be found there in other manuscripts, but as yet I do not know definitely of any manuscript of the eighth book where it does not occur. Since this article went to press I have learned, thanks to the kindness of the Librarian of Balliol College, Oxford, and of Monsignore Eugène Tisserant, Pro-prefetto of the Biblioteca Apostolica Vaticana, that the passage also occurs in MSS Balliol College 238B and Chigo G. VIII. 234.

How did this foreign matter find its way into the manuscripts of the *Fons memorabilium universi,* as Bandini's encyclopedia was entitled? One plausible explanation would be that these two young men, being impecunious lawyers with little practice, eked out a live-

[1] See my *History of Magic and Experimental Science*, Vol. III, Ch. 32.

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lihood by copying manuscripts, were so engaged to copy Bandini's work, and were sufficiently faithless to their task to insert this puff or "blurb" concerning themselves in various copies of the work. Possibly it was done as a joke rather than as serious self-glorification and advertising. Or the young lawyers may have bribed a copyist to insert it. Or, if we regard the manuscript containing only eight books, in which our passage comes at the end, as one of the partial versions of the work which already circulated in Bandini's lifetime, perhaps the puff may in the first instance have been merely a conceited note or personal memorandum written by one of the young men at the close of his own copy. Then when the son of Bandini attempted a complete posthumous edition, he may have borrowed this partial manuscript to piece out the whole, and the interpolation have been inadvertently included. This may seem too far-fetched. The competent authorities to whom Laurentius Bandinus submitted the work could not have examined it with much care, if this foreign passage was already there and they overlooked it. Nor could Laurentius himself have done so in the case of the posthumous edition, although he issued the work at great expense as an act of filial piety. Even if our lawyers were the original copyists, it appears that later copyists unquestioningly included it. This suggests that they either paid so little attention to the meaning of what they were copying that they did not notice the interpolation, or that they were unwilling to lessen their remuneration by shortening the text in any way. In any case, whoever the copyists were, they would seem not to have been well supervised.

I give a Latin text of the interpolated passage based upon the three manuscripts mentioned, followed by a free English translation.

> Gaude etiam Bononia legum mater [2] cunctorumque studiorum alumna verax philosophorumque asilum portus et nidus dulcis quia quamquam sis fecundissima legistarum multorumque segetem letam feceris nil tamen nostro seculo genuisti letius [3] Karolo cum Romeo. Hi enim velut pinguedinis legum filii [4] leva et [5] dextera tuo candelabro assistentes ab ortu ad occasum tamquam duo celi magna luminaria iam refulgent. Sunt ambo nobilissimi genere sed longe plus virtutibus morum clari. Sunt ambo sub gloriosissimis doctoribus educati. Sunt ambo simul

[2] In Vatic. lat. 2028: "Gaude legum mater Bononia."

[3] "Leteius" in Vatic. Palat. lat. 922; "legius" in Vatic. lat. 3121.

[4] "Filii pinguedinis legum", in Vatic. lat. 3121.

[5] "Laudent" incorrectly instead of "leva et" in Vatic. Palat. lat. 922.

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cum doctorum letitia examinati nulloque refragante ex cocilio examinantium[6] cum plebis gaudio et patrum frequentia[7] doctorati. Nunc vero sunt in optima policia. Nam laudatissime iura legit Karolus pro communi Romeus autem tractatus[8] ad publica mira[9] facundia miroque sensu prodest omnibus consulendo. Sed quia magis movent exempla quam verba prebet de se tam stupenda miracula quod nec a paterna nec a maiorum virtute degenerat quemadmodum virgulta naturaliter non discrepant a radice.[10]

TRANSLATION.

Rejoice, Bologna, mother of laws, true nurse of every study, and of all philosophers the asylum, haven and sweet nest, because, though you have made many a happy harvest from the rich crop of jurists, never in our age have you given birth more happily than with Charles and Romeo. For they as sons of legal fulness uphold your candelabrum on the right and on the left, or, like the two major luminaries of the sky, shine from east to west. They are of most noble stock but far more illustrious in their virtuous characters. They have both been educated under the most glorious doctors. They were both examined together to the delight of the doctors and, no dissenting voice being raised, they received the doctorate from the council of examiners with the plaudits of the people and the presence of the city fathers. Now they are most useful citizens. For Charles gives most praiseworthy law lectures for the commune, while Romeo, attending to public affairs, with marvelous ease and sense aids all in consultation. But since examples move more than words, he offers such stupendous miracles concerning himself that he degenerates from the virtue neither of his father nor his ancestors, just as shoots naturally are not diverse from their root.

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[6] In two of the MSS the abbreviated form used seems rather "examinatum", but the sense seems to call for "examinantium".

[7] "Parium sequentia" in Vatic. lat. 3121.

[8] Or "tractus" or "tractans".

[9] "Iura" in Vatic. Palat. lat. 922.

[10] Vatic. lat. 3121 adds "Deo gratias. Amen. Amen. Amen.", probably because the manuscript ends there.

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REVIEWS

Ideas in Motion. By DIXON RYAN FOX. New York and London, D. Appleton-Century Company, 1935.—126 pp. $1.25.

This little book is a welcome addition to the growing literature by professional and trained American historians which seeks to discover a pattern in history rather than the mere heaping up of new "facts". For much too long American historical scholarship has, by the many, been considered to consist in the presentation of facts, the chief desiderata concerning which seem to have been that they shall be new and indubitably authenticated. Whether or not one considers history as a science will depend much on one's definitions of both terms. It is assuredly not an exact science, but it is an odd point that to a great extent those academic historians who insist most upon ranking their subject among "the sciences" have been among those who have expressed most professional scorn for those who, instead of digging up new facts, have tried to discover relations between them, i. e., who have tried the usual scientific procedure of making and testing hypotheses in the hope of establishing eventually some laws.

This is odd because obviously history can utilize facts in only one of two ways. It may jot them down regardless of connection, like the old monastic chronicles, or it may assemble those which appear to have connection. The first has long been discarded but the second involves a selection based upon some necessary or causal relationships, in other words the recognition of historical laws. This being so, it might seem to be the part of the highest and most ripened historical scholarship to discover what those laws may be. If we insist on relationships yet refuse to discover laws, if they can be discovered, then the adventure of the historian among facts becomes much like that of the traveler among hotels who, as Baedeker says, should select them "according to his tastes and fancy". "Science" alters from age to age, and a biographer of a few centuries ago might have considered it just as important to note the conjunction of the planets at his hero's birth as the modern biographer does to record the Freudian repressions of his adolescence. One may be as wrong as the other, but the point is that selection

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of facts necessitates an accepted theory of relations between them. If history is to become a valuable social science it would seem to be as essential to suggest, test and validate such theories as it is in any other science. Yet, with some notable exceptions, American historical scholars have considered such efforts as not quite scholarly and as possibly bringing them into disrepute as contrasted with the work of amassing more facts so buttressed by evidence as to make their books impregnable to attack by other scholars—who may want their academic jobs.

The interest of President Fox's book lies in the fact that the many and diverse facts which he cites are used in the effort to establish certain "patterns" or "themes" in history, i. e., certain more or less invariable relations between specified groups of social phenomena. He distinctly disclaims the attempt as yet to establish genuine "laws", and notes the difficulty of the historian in having to base his efforts to establish them upon inadequate data. "He must humbly recognize", he writes, "the fewness of his facts and not crush them with too vast an edifice of inference". Yet the author does develop certain patterns.

The field in which he has chosen to work for this purpose is that of the transit of ideas, more particularly between an older and newer civilization. The four papers now printed, two of which (now revised) appeared first in *The American Historical Review*, are entitled "Civilization in Transit", "Culture in Knapsacks", "A Synthetic Principle in American Social History", and "Refuse Ideas and their Disposal".

In the first, as a sample of his method, he traces how culture was first transferred from the Old World to the New, degenerated, and was re-created in America. The four stages he finds in the process, he tests again as operative on successive frontiers. Having ascertained the succession of facts in one case, found them the same in other cases, he does what any scientist would do, viz., suggests a generalization or hypothesis for further testing. If other American historians should verify this, and also historians in other countries which have had a similar transit of civilization, then there would be reasonable basis for the predicating of a law in at least a minor part of the field of history. That it is in a minor part makes the hypothesis probably the more accurate and certainly the more readily tested. If we are ever to build up history to the point that it may in any way become predictable it will likely be by such modest means and not by the wider generalizations of Buckle, Spengler

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et al. In a world torn by anxieties of every sort, these tentative hypotheses of how history works—there are three or four of them —may not appear highly important. The significance to me of the book, however, is its aim and method, both of which seem to fit the chief needs to-day of historical scholarship at the point which it has now reached.

JAMES TRUSLOW ADAMS

SOUTHPORT, CONN.

The Governments of the British Empire. By ARTHUR BERRIEDALE KEITH. New York, The Macmillan Company, 1935.—xxvii, 646 pp. $6.00.

Letters on Imperial Relations, Indian Reform, Constitutional and International Law, 1916-1935. By ARTHUR BERRIEDALE KEITH. London and New York, Oxford University Press, 1935. —xx, 370 pp. $5.50.

The first of these two volumes follows, in its general plan and organization, one of the author's earlier works, *The Constitution, Administration and Laws of the Empire*, which was published in a series on the British Empire that came out while the Wembley Exhibition was in progress, and it incorporates some of the matter contained therein. But it is, as Professor Keith says, "essentially a new work, so drastic have been the changes in the structure of the Empire in the last decade." Attention will be confined in this review to his description and discussion of some of these changes, but it should be emphasized that this is a systematic, well-rounded treatise, and the author's name is a guarantee that it is authoritative. The *Letters on Imperial Relations* consists of a selection from the contributions to newspapers which he has made during the last twenty years. They form a valuable commentary on important events and developments in the fields indicated in the title. It is well known that Professor Keith is not a cloistered recluse or a mere interested observer. His opinions have had their influence on statesmen and on the course of events in the evolution of the British Commonwealth.

Most students of this evolution not given to legal refinements would say that in view of the Statute of Westminster the doctrine of "the absolute validity throughout the Empire of any legislation by the Imperial Parliament whatever its subject matter", a doctrine which is declared to be the foundation of the constitution of the

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Empire, is no longer applicable to the Dominions. Professor Keith is more cautious. He reminds us that the Statute contains no formal renunciation of the legislative supremacy of the Imperial Parliament over the Dominions, and he implies that even if such a renunciation had been made, it would not have legally binding effect upon subsequent Parliaments, which is sound British legal doctrine. But the vital question is not the theoretical legal power of the Imperial Parliament, but the enforcement of its laws, and it is significant that the Union of South Africa has recently provided in the Status of the Union Act, 1934, that no act of the Imperial Parliament shall extend to the Union, as part of its law, unless it shall have been so extended by an act of the Union Parliament, thus going a step beyond the Statute of Westminster, which had enacted that no future act of the Imperial Parliament should extend to a Dominion, "as part of the law of that Dominion", unless it had been declared in the act that the Dominion had requested and consented to the enactment thereof.

In considering the limits of Dominion legislative power the author examines the question of whether a Dominion legislature may legally terminate the connection between the Dominion and the Crown, in other words, secede from the Empire. Here opinion is divided. In South Africa and the Irish Free State the predominant opinion is that a right of secession exists; in the other Dominions, as in the United Kingdom, the opposite view prevails.

The last vestiges of imperial authority over the Dominions have not disappeared. The right of the Crown to disallow Dominion legislation has long been obsolete in practice, and South Africa has formally abolished it by constitutional amendment, but in some of the Dominions bills relating to specified subjects must be reserved by the Governor-General for the signification of the pleasure of the Crown. In the Irish Free State and South Africa the power of reservation has been abolished. The right of appeal from Dominion courts to the Privy Council, as provided for in Dominion constitutions, is an apparent limitation on Dominion autonomy which has naturally aroused considerable opposition. But it still exists except in the Irish Free State, where it was abolished by constitutional amendment in 1933.

Has the unity of the Empire in international law been broken? Are the relations between the United Kingdom and the Dominions no closer than those between states joined in a mere personal union, such as Great Britain and Hanover between 1714 and 1837? To

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bring about such a result it would be necessary, Professor Keith thinks, "both that the Governments concerned should aim at this goal and that foreign states should recognise the result as reached"; "neither of these requisites has been in general fulfilled in this case, except in the limited and special degree implied in the Covenant of the League of Nations", and the Covenant "makes no definite attempt to give its members the full status of units of international law". It is difficult, however, to make the new procedure adopted by the Irish Free State in 1931 and by South Africa in 1934 in the negotiation, signature and ratification of treaties square with the theory of the international unity of the Empire. The former now makes its own treaties without any intervention whatever by the Imperial Government, and in South Africa it has recently been enacted that the authority of the King with regard to external affairs may be exercised by the Governor-General, "a striking innovation, for it has never been the practice for the King to delegate to the Governor-General his prerogative in respect of external affairs, such as the making of war or peace, the declaration of neutrality, and the conclusion of treaties". In the *Letters* Professor Keith, writing in November 1930, says: "The only way in which real effect could be given to the desire of the Union and Free State Governments to be equal in status, both in theory and in fact, with the United Kingdom would be confer on the Governors-General of the Dominions . . . the full Royal authority to receive and accredit Ministers, to make treaties, and to declare war, or neutrality, and make peace. Then each Dominion would be in effect an independent State, united by a mere formal personal union with the rest of the Empire." Has South Africa now reached this position? It should be remarked that it is only in that Dominion and in the Irish Free State that the opinion seems to prevail that the Commonwealth consists of distinct international units, and no other Dominion claims the right of neutrality in international law in the event of a British war.

The sixty-five-page chapter on the governments of the Dominions is an admirable summary of the subject which Professor Keith has made peculiarly his own. Exception might perhaps be taken to his discussion of the distribution of powers in Canada between the Dominion and the provinces. He does not take sufficient account of the different trends in judicial interpretation, and a reader unacquainted with Canadian constitutional law would not realize that for many years the intent of the makers of the Canadian Constitution was

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in large measure nullified by Privy Council decisions restricting the scope of the Dominion's residuary power.

It would be ungracious to find much fault with a scholar so erudite as Professor Keith on the score of his style. He was obliged to compress, but he sometimes carries compression so far and packs his sentences so tightly that he is difficult to read, and occasionally he approaches obscurity.

R. L. SCHUYLER

Dwight Morrow. By HAROLD NICOLSON. New York, Harcourt, Brace and Company, 1935.—xvii, 409 pp. $3.75.

Dwight Morrow, according to his authorized English biographer, "developed a new type of civilized mind" and "created a new pattern for the practice and theory of diplomacy".

It was to be expected that Mr. Nicolson would find in the mind and methods of Morrow sharp contrasts to those of his latest biographical subject, Curzon of Kedleston, but it is amazing to be told that both Morrow's type of mind and his methods in diplomacy were altogether new.

Morrow, says Mr. Nicolson, was "a man of action predominantly interested in ideas". He was "ambitious, determined, precise, cautious, unremitting, and shrewd", but "the main constituents" of his mind were "faith (in his fellowmen), magnanimity, patience, and a perfect balance between imagination and reason", and he "was able throughout his life to subordinate the quantitative standards of a man of action to the qualitative standards of a man of thought". The "type of civilized mind" that Morrow evolved was, according to his biographer, "a creative combination of opposites", a combination "between the taut and the elastic, between the rigid and the mobile, between the reasonable and the fantastic, between romance and science, between the tolerant and the firm". This type of mind is doubtless all too rare in the practice of law, finance, diplomacy and politics—the spheres of Morrow's activity—but it is certainly not new.

The ascription to Morrow of the creation of "a new pattern for the practice and theory of diplomacy" is equally exaggerated. Morrow was unquestionably a consummate diplomat, and his capacity for mastering the technical details of a problem without losing sight of the main issue has probably been equalled by very few men in the diplomatic service, but the essential lines of the pattern which he

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followed in diplomacy were indicated some two thousand years ago to certain simple individuals who, at the outset of a difficult mission, were enjoined to be "wise as serpents, and harmless as doves". Surely no new pattern was created by "a profound and prolonged study of every problem", by scrupulous truthfulness, by what may well be called charity, by what Mr. Nicolson deplores as "short circuiting" (handling diplomatic business through channels other than the Foreign Office), or by a combination of all these.

Though frankly much more interested in Morrow's personality than in his career, Mr. Nicolson gives a faithful and illuminating account of his subject's formative years, particularly at Amherst, where "he learned the secret" of the fusion of the practicable with the desirable; his development as a leading corporation lawyer; his work as a member of J. P. Morgan and Company; his diplomatic mission in Mexico; his brief service in the United States Senate; and his activities in connection with prison reform in New Jersey, air craft investigation in Washington, and Allied Maritime Transport and Naval Disarmament in Europe. With reference to Morrow's mission in Mexico, which is usually regarded as the high point in his career, Mr. Nicolson observes that the practical achievement of that mission was "not either comprehensive, durable, or complete". By his conciliatory spirit and by his reaffirmation of ideas previously advanced by Woodrow Wilson with respect to the relations between the United States and Latin America, Morrow did, however, create an atmosphere in which it was possible to discuss the problems which had brought Mexico and the United States to an apparent *impasse*, and his acute analysis of those problems, no less than his tact, sincerity, good humor, and persistence, led to a solution of some of them and to the removal of others from the realm of controversy. If the same qualities which Morrow showed in Mexico had been at the disposal of the United States Senate in the years since 1931, the events of these years might have been markedly different.

To many readers of Mr. Nicolson's book the most interesting fact brought out will be Morrow's yearning toward academic life. Some will have forgotten that he seriously considered during his career offers of the presidency of Yale and the chair of International Law at Columbia. The same group of readers will be particularly struck by the hesitancy with which Morrow entered upon each of the successive phases of his varied career. His decision to leave the practice of law for a partnership in J. P. Morgan and Company was, curiously

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enough, precipitated by an appeal to his "protective passion toward the misunderstood". When he had to choose between continuing with the Morgan firm and becoming Ambassador to Mexico, he felt that he would be sorry whichever he did. And, according to Mrs. Morrow's entry in her diary on May 13, 1930, he felt that he had been "trapped" into the Senatorial campaign. Mr. Nicolson is right in calling him "the ambitious but uncompetitive man".

EDGAR TURLINGTON

WASHINGTON, D. C.

World Court Reports. 2 Volumes. Edited by MANLEY O. HUDSON. Washington, Carnegie Endowment for International Peace, Volume I, 1934, Volume II, 1935.—xxix, 777; xxi, 870 pp. $5.00 per set.

Fontes Juris Gentium. Edited by VIKTOR BRUNS. Series A. Sectio 1, Tomus 3: *Digest of the Decisions of the Permanent Court of International Justice, 1931-1934.* Published for the Institut für Ausländisches Öffentliches Recht und Völkerrecht by Carl Heymanns Verlag, Berlin, 1935.—xviii, 108 pp. Rm. 17.

In his preface to the first volume of his *World Court Reports,* Professor Hudson remarks that the Permanent Court of International Justice "is probably the best documented public institution in the world." Professor Hudson is almost apologetic in presenting a new form of documentation for that tribunal but he explains why the work has been done and the result convinces the reader that it was worth while undertaking and that it has been well done.

In his Introduction, Dr. James Brown Scott explains that these volumes are collateral if not lineal descendants of the *Hague Court Reports* which, under his able editorship, were also published by the Carnegie Endowment for International Peace in order to make available the decisions of the Permanent Court of Arbitration. At first blush, one might say that the excellent official documentation of the Permanent Court of International Justice and the ready accessibility of the texts of its opinions, orders, judgments and other official actions, makes unnecessary the kind of compilation which has rendered so useful a service with reference to the Permanent Court of Arbitration. However, Professor Hudson has edited the materials in such a way that they are not merely reproductions of the official documentation but illuminating documentary histories of the cases before the Court.

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From Germany comes the second volume relating to the Permanent Court of International Justice, in the series of the *Fontes Juris Gentium,* published for the Institut für Ausländisches Öffentliches Recht und Völkerrecht, and edited by Dr. Viktor Bruns.[1]

The two publications here reviewed are entirely different in plan and in content. They are both extremely useful, each in its own way. The volume in the *Fontes* is an index digest to the views of the Court classified and arranged according to substantive topics in the field of international law. Professor Hudson's *World Court Reports* are reproductions of the English texts of the Court's opinions, judgments and orders, preceded by an editorial note giving the history of the case before and after the Court's action, and having a bibliographical note containing the titles of discussions of each particular case. The texts of the documents by which the Court became seized of each particular question or controversy are also reproduced and the first volume opens with a special section containing the text of the Covenant of the League, the Statute of the Court, its Protocols and Rules.

It may be frankly admitted that if one has at his disposal all of the official publications of the Court and ample time, these two compilations would not be essential. Yet they would always be useful. The editors of the *Fontes* have always been careful to point out that the books are to be used merely as guides and digests and that one should always be prepared to refer back to the original texts. If one has at his disposal the volumes of the *Fontes* and Professor Hudson's volumes, he can make use of the contributions of the Permanent Court of International Justice with considerable facility. If he is interested in the Court's views on the interpretation of treaties, for example, the extremely efficient index system of the *Fontes* will reveal to him the instances in which the Court has had occasion to speak on the subject. He will get the name and number of the judgment or opinion and the page reference. He could then turn to Professor Hudson's volumes and locate the case, either through the several tables in the front of each volume, or through the index, and readily locate the entire context of the short passage quoted in the *Fontes.* Mr. Hudson's volumes also have a subject index, but it is not as complete or as detailed as is that of the *Fontes.* Mr. Hudson has star-paged his texts so that the official pagination is readily ascertained.

[1] The early volumes in this series have been reviewed in this journal, volume XLVII, p. 296, and volume XLVIII, p. 303.

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One of the distinctive contributions in Professor Hudson's volumes is the editorial notes. These afford information which is not readily available and which is very little known. Although they are of necessity expressed most concisely, they are adequate to give a picture of the aftermath of the Court's opinion or decision. In some instances, full information is not available, but in many cases, Professor Hudson's notes are most illuminating and satisfactory. A good example is that on the Mosul controversy (p. 720, vol. I). As a matter of convenient reference, however, the suggestion is ventured that it would be useful to include in these editorial notes a very brief statement of the Court's conclusion; at present one is led through the steps which occur prior to the Court's action, up to a statement of the date of the Court's action and then carried on through the subsequent events. One who is not wholly familiar with the jurisprudence of the Court must interrupt his reading of this summary to find out what the view of the Court was, since otherwise the discussion of the subsequent events is scarcely comprehensible.

Both compilations have necessarily adopted a somewhat chronological treatment. The first volume of the *Fontes* covered the work of the Court between the years 1922 and 1930. The second volume comes up through 1934, excluding the decision on the Eastern Greenland case which was handed down on December 12, 1934. Mr. Hudson's first volume covers the years 1922 to 1926 and the second volume the period from 1927 to 1932. Within his volumes, Mr. Hudson has arranged the cases chronologically, except that he has grouped together cases which deal with the same set of facts. Thus in volume I sixteen different pronouncements dealing with German interests in Polish Upper Silesia are grouped together and occupy 243 pages.

It is unnecessary to comment upon Professor Hudson's qualifications as editor of the *World Court Reports*. No one in this country has devoted more time and energy to a study of the World Court and its work, nor has anyone contributed so voluminously to the literature of the subject. Mr. Hudson is always most careful to be exact—witness his insistence that the so-called Fifth Advisory Opinion was a refusal to give an opinion and his statement on page one of his Preface regarding the authoritativeness of the English versions of the Court's pronouncements. In regard to this recent volume of the *Fontes,* the reviewer can add little to what he has said in previous reviews of other volumes of the series regarding the

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excellence of the editorial work which has been devoted to the preparation. Fortunately both series are intended to be continuing and further volumes may be expected from time to time as the jurisprudence of the Court accumulates.

PHILIP C. JESSUP

The Future of Monetary Policy. A Report on International Monetary Problems by a Group of the Royal Institute of International Affairs. New York, Oxford University Press; London, Humphrey Milford, Oxford University Press, 1935.—ix, 219 pp. $4.00.

This volume is the second and final report of the Study Group which produced the widely read essays on *Monetary Policy and the Depression* (1933). Both the distinguished character of this Group, which among others includes Sir Charles Addis, Mr. D. H. Robertson and Mr. H. D. Henderson, and the high quality of its work, assure the new volume the careful attention of all interested students.

As with any book of genuine substance, the volume is difficult to appraise fairly in a few paragraphs. The task is further complicated by the fact that at many points the views expressed are obviously a compromise between divergent opinions; and by the wide range of events and ideas which are encompassed. "Monetary policy" is conceived in a very broad sense, quite properly, and the discussion runs from domestic production control and public finance at one end to the problems of foreign investment at the other. It should also be observed that the title selected is not altogether exact. The book is not an attempt to forecast the future development of monetary policy, as might be supposed, nor an attempt to evaluate its future influence on social and economic life at large, but is in the main a series of statements of what the authors think future monetary policy *should* be. In drafting these statements, the authors have endeavored throughout to maintain close contact with monetary and general economic conditions as they actually exist, and as a result an admirable flavor of reality pervades the larger part of the book. Indeed, its most interesting and most valuable sections are those which offer analyses and generalizations from the financial history of recent years (especially chaps. viii, xv), and those which describe various parts of the world's financial machinery (especially chaps. vi, x, xiii).

The attempt to define the desirable monetary policy or policies of the future is less satisfactory, and reflects clearly the state of rapid

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and confusing flux in which monetary ideas and practices now find themselves. The resulting formulations belong neither to the epoch which really closed in 1914, nor to that future and presumably quite different epoch whereof even the main features are as yet hardly discernible. Rather, they are a selection of old and new elements which at points have been blended rather indiscriminately, without full regard for internal consistency; and they give the impression that the authors were trying to take a little of every apparently good thing. This last may be the only procedure by which useful results can actually be achieved in attempting to bring order out of the present monetary chaos, but it is not a procedure which the theorist (perhaps himself too rigid?) is likely to commend warmly. In the present case, the explanation is doubtless to be found largely in the multiple authorship of the volume; yet if either eclecticism or a fair representation of current ideas was the object (*cf.* p. 214), there are serious omissions, particularly of the ideas of the Austrian school and its recent variants.

The result is that the book falls far short of presenting a compact, sharply defined system of unified ideas. In chapter ii, it is declared that the great ultimate aims of monetary policy should be "continuity of values" (can this be defined objectively; and may wide but smooth fluctuations not be "continuous" mathematically?), foreign exchange stability, and a high degree of international financial coöperation. The attempt to show that the first two aims are both consistent with one another, *and* of equal importance, is not satisfactory. If all countries secure continuity of internal values, a substantial degree of foreign exchange stability will surely ensue anyway, while if only one secures continuity, allowing the foreign exchanges to fluctuate may be the sole way for it to maintain this continuity. Moreover, the facts that achieving the first of these objectives by the paths proposed would require something close to omniscience, and achieving the last a most improbable (politically speaking) subordination of short-run to long-run national interests, are adumbrated but are surely taken rather lightly. The authors recognize the force of many of the contentions of recent monetary theorists, yet here have one eye always turned wishfully back to the good old days, when the international gold standard "really worked". They would like to attain to the new ideals, yet seek to do so within what is essentially the old framework of institutions and practices: this seems hardly practicable.

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In chapter iii, however, the authors take almost the opposite stand with respect to immediate and short-term policies. The majority recommend that any attempt at foreign exchange stabilization be postponed till there is closer international coöperation (one feels strong sympathy here with the logic of the minority's protest, pp. 25-27!); that an internal expansionist policy be adopted by Great Britain; and that if this entails a further exchange depreciation, no countervailing efforts be made. These propositions are not *necessarily* inconsistent with those of chapter ii, but the links, the definition of how these short-term measures can be made to contribute to the long-run objectives, are left obscure. If the reader becomes somewhat puzzled and even irritated here, his feeling is not unnatural.

Finally, the more detailed discussion of means for measuring and achieving "continuity of values" (see especially chaps. iv and v) is not satisfying. It is true that to maintain continuity, voluntary saving and investments must be kept in some sort of balance, some form of stability of prices is required, and prices and costs must be kept in a "proper relationship". This is all familiar. But how these magnitudes and their proper adjustment are to be gauged in practical terms, what barometers or guides to corrective action should be used, how the correctives may be expected to work, and particularly how they can be made to work *in time*—these vital problems are hardly more than stated. The informed student, I fear, will find rather little here that is new, and a good deal that is diffuse and even confusing. For one example, the distinction between "primary" and "secondary" recessions (p. 50) may be logically useful, but it would be most difficult for the statistician or the monetary theorist to detect it, except in quantitative terms and *after* the event; and almost impossible to know that a secondary recession requiring countervailing measures of the types here proposed was developing in time to take such measures. For another, the discussion of the price-cost relationship (pp. 59 *et seq.*) again implies almost omniscience in the controlling authorities, yet gives these authorities no very definite objective tests on which to base action. If our monetary control is to be left primarily to human "judgment" (p. 65), surely we are about as badly off as before. For another, it is alleged that the increase in the world's supply of credit should be related to "needs" (p. 181; *cf.* p. 207), but no objective and usable test of needs is given. Clearly, satisfying one country's needs may be quite inconsistent with satisfying other countries' needs and maintaining an adequate international adjustment, in short periods and possibly in long.

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These latter criticisms, however, presumably reflect fundamental differences in point of view between the authors of the volume and the present reviewer, as to what can and cannot be done within the framework of the existing types of monetary and commercial banking systems: differences which cannot be elaborated here. There is little disagreement as to the ultimate objective, greater general stability. Those who think that a rational monetary policy can be evolved within the existing systems, and particularly those who live in countries with a relatively large stake in international trade and finance, will find this volume not merely a convenient survey, but a rich mine of contributions on a wide range of topics. Moreover, all students will be grateful both for the numerous summaries of factual material, and for the trenchant discussions of such questions as the Cassel and Kitchin gold estimates, the reports of the gold delegation and the B. I. S., Mr. Keynes' conclusions on public expenditures, and the like. Whether one agrees or disagrees with its underlying argument, this book is an excellent piece of work.

JAMES W. ANGELL

Political Power. By CHARLES E. MERRIAM. New York and London, Whittlesey House, McGraw-Hill Book Company, 1934. —vii, 331 pp. $3.00.

It is interesting to read in Mr. Merriam's "Introduction" to *Political Power* that he began this study in Berlin at the time of the German Reichstag election of 1932, "in the midst of a furious struggle for the possession of the symbols and the substance of political power." There is the pleasant remembrance that in Berlin years ago Professor Merriam began his monograph on the theory of sovereignty. After the years, the ever-recurring problems of political power remain, and in the working out of theories of the state, empires have fallen and dictatorships have powerfully defined the logic of their political authority.

The author makes plain that he proposes to set forth what he has found out about the nature of political power during his years of reading, reflection, observation, experience. He carefully records that no special interpretation of power is to be followed. Professor Merriam's primary purpose is to set forth what rôle political power plays in the process of social control. With Rousseau, Machiavelli, Nietzsche, Hobbes and Austin, he is less concerned than with the composition and incidence of political power in the new world of the

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twentieth century. Each generation necessarily reconsiders the nature of power, and the vast changes which have taken place in these times in technology and in the complex social environment require understanding—make necessary an examination of what Professor Merriam designates as "the composition and incidence of political power."

Professor Merriam began his study on Unter den Linden in Berlin and concluded it on the Midway in Chicago. This in itself is an interesting fact. His own words describe the contents of the book: "I have observed the birth of power and looked at the family, including the outlaws. I have looked at the sacred credenda and the miranda of power; and the obverse side of the shame of power, and the poverty of power. I have analyzed some of the more important ways and means by which the fittest survive in the world of political power; have considered the morbidity and mortality of power; have examined the role of abnegation as a road to authority; and finally I have endeavored to trace the emerging trends of power in the modern world."

Throughout the book the chaotic scene of the present is in the background. It is evident in the references to Russia, to Germany, to Italy, the Jesuit order, the United States Steel Corporation.

It would be perhaps more useful to political scientists if Professor Merriam would write less in the jargon of the sociologists and the word-mongering psychologists. He often uses the words of Plato and Aristotle, and his essential ideas are always drawn from the past; yet he allows a willful distraction to intrude itself in his strong insistence on awkward phrases from other fields and in borrowings from the contemporary nomenclature of psychology and sociology.

There is at times a strange contradiction of profundity with a comment on the trivial aspects of the new politics. Also conviction of genuine sincerity goes hand in hand with a vague appeal to existing political expediences. It is a book hard to read. There are pages of tedious writing, and often the ephemeral phrases of some of the new vocabulary of sociology and psychology seem labored. But in the chapters "The Shame of Power" and "The Poverty of Power", and here and there in paragraphs, a wise and tolerant and hopeful philosophy of political change is dominant.

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Deutsche Geschichte im neunzehnten Jahrhundert. Volumes I-II. By FRANZ SCHNABEL. Freiburg, Herder Verlag (St. Louis, Herder Book Co.), 1929-33.—628 and 414 pp.

These two volumes by Professor Schnabel represent the beginnings of the first grand attempt to present a history of 19th-century Germany since the work of Treitschke. The first two volumes, planned and for the most part written before the advent of Hitler to power, carry the story down to the third decade of the century. A comparison with the work of Treitschke, however, reveals the great changes in both German history and German historiography between the period of Treitschke and the epoch of the Weimar Republic. Treitschke begins his history with the famous sentence, " Despite the antiquity of her history, Germany is the youngest of the great nations of Europe ", and goes on to quote the lines of Hölderlin:

> O sacred heart of the people, O Fatherland!
> All patient, thou, like our silent Mother Earth
> And misunderstood, although now from thy depths
> Strangers draw all that they have of the best.

Schnabel begins his history of Germany with a long and splendid survey of modern world history as a background for German developments. Whereas Treitschke writes from the narrow German nationalist point of view, Schnabel paints his picture of Germany on a broad universal and humanitarian canvas. The absence of natural frontiers and the great mingling of peoples and cultures in Germany, the heart of Europe, represent for him not a calamity to be deplored but a factor largely responsible for the rich spirituality of German culture. His universal and human attitude is always evident. The work is replete with analogies and comparisons with non-German events and personalities, such as the chapter on the historical significance of the French Revolution, his striking comparison of Kant and Benjamin Franklin or his excellent account of the ideas of De Maistre as a preface to his treatment of Haller and German conservatism.

Schnabel's work can hardly be called original. But he has assimilated and utilized all the more important results of the works of Dilthey, Troeltsch, Max Weber, Friedrich Meinecke and their disciples and has given us a sample of *Geistesgeschichte* as it should be written. Unlike Treitschke, Schnabel is more concerned with understanding and interpreting the power of ideas and deeper social and psychological forces than with either presenting a record of political

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events or developing merely the evolution of the power of the state. Unlike so many other German contributions to *Geistesgeschichte,* Schnabel's work is not overburdened with complex, pompous and high-sounding but meaningless phrases but is written with almost the same lucidity and clarity of expression which so distinguishes the work of Treitschke. Schnabel has also taken cognizance of the recent work done on the historical development of modern nationalism. The French Revolution, Herder, Burke, the romanticists—all are given their due share in tracing the turn from a cultural cosmopolitanism to a political nationalism. The analysis of the romantic psychology and subjectivism is a particularly striking piece of historical writing. For Schnabel the most important character of romanticism is found in the sharp contradiction between the collectivization and mechanization of social life and the subjectivism of the individual. "Countless are those men of genius in the nineteenth century who lacked the power, both for their genius and their existence, to overcome this contradiction and who pitifully came to ruin because of it. The series of such disillusioned ones goes from Lord Byron to Oscar Wilde, from Hölderlin and Lenau to Nietzsche and from Kleist to Van Gogh. They are all phenomena brought forth and swallowed up by the nineteenth century. They are all romantic natures" (vol. I, pp. 239-40).

For Schnabel as for Treitschke history is something vital and meaningful and not the subject for either an antiquarian or a raconteur. The historian of today is confronted with two almost contradictory tasks. He seeks to find in the past a clue to the understanding of the life and institutions of his own time and yet he knows that he can never hope to penetrate into the past except by a sympathetic understanding of the past in its own terms, and in the light of the then existing conditions. Schnabel displays a balanced combination of both these characters. Whether he is describing Lutheran Protestantism or traditionalist Catholicism, liberalism or conservatism, classicism or romanticism, his treatment is always one of inner sympathy with the subject he is studying. And yet his work is almost contemporary in character. One feels that his eye is always on the present as well as the past. For those who glibly talk of National Socialism as merely the product of Versailles or as the "last stage of capitalism" and for whom modern history begins with the year 1918, it would be well to read carefully these volumes of Schnabel. All the cataclysmic and magical interpretations of recent events are at one in failing to perceive the force of historical development. One

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would not be so amazed, for example, at the burning of books in Nazi Germany if he had read Schnabel's fine description of the Wartburgfest of the German students in 1817 and the great bonfire of the books of Haller, Kotzebue, Schmaltz and Kamptz. The author's keen remark that "the overheated nationalism of the 19th century came to be a mark of those who either by descent or destiny came from beyond the [German] borders" reminds us of many of the present leaders of the National Socialist movement: Hitler from Austria, Rudolph Hess from Egypt, Alfred Rosenberg from Reval, Walter Darré from Buenos Aires, Hanfstängel a German-American, Julius Lippert from Basel and scores of other lesser figures. Perhaps the most pertinent section of the book for a proper understanding of German developments is the author's analysis of liberalism. He presents a very keen study of the political and juristic doctrines of liberalism, its sources in English, French, Swiss and American models, how it is distinguished from democracy, its concept of the *Rechtsstaat* and its pacifist internationalism and above all why liberalism never took root in Germany. One can never hope to explain adequately the triumph of nationalist dictatorship in Germany unless he studies the struggle and defeat of German liberalism in the first decades of the 19th century. Upon all these problems the work of Schnabel throws an illuminating light. One can only hope that despite the trying situation in Germany today, Professor Schnabel will find some way of bringing this grand work to a successful conclusion.

KOPPEL S. PINSON

NEW YORK CITY

Social and Economic Reconstruction in the United States. By the International Labor Office. Geneva, International Labor Office; New York and Boston, World Peace Foundation, 1934.—viii, 401 pp. 10s. 6d.; $2.75.

The International Labor Office, recognizing that the American New Deal is a significant event in the wider history of capitalism, has published a report on the policies of the Roosevelt Administration. Recovery in the United States is a condition precedent to world recovery, and American experience in seeking to induce recovery must react upon the policies of other countries. Even more important to the International Labor Office is the realization that "the outcome of the New Deal, more than any other single factor, is likely to decide how far national control of economic conditions can be reconciled with international economic relationships."

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A brief summary of economic conditions during the depression up to 1933, and of the national recovery legislation of 1933, is followed by chapters on the relief of unemployment, the National Industrial Recovery Act (in terms of the President's Reëmployment Agreement, the administrative machinery, labor conditions, prices and trade practices, and industrial relations), agriculture, banking and investment, and monetary policy (the last being the least penetrating of the series). Sympathetically open-minded in approach, the report recreates the social atmosphere of the first flush of the New Deal by frequent citations from presidential pronouncements, but the criticism even then emerging is also summarized.

The Geneva observer sees the wide breach made by the New Deal in the traditional American policy of *laissez-faire* as the most striking feature of the new program. The gradual shift in the orientation of policy from the inducement of business recovery to widespread reconstruction is emphasized. Government responsibility for the care of the unemployed and the regulation of banking and financial procedure is less novel abroad than in the United States. But the attempt to organize agricultural and industrial producers so as to permit a measure of self-government, and deliberate governmental effort to bring about general recovery represent new developments of state policy. The attempt to redistribute incomes in favor of wage earners and farmers is also a new line of policy, and the arguments supporting such redistribution on economic rather than general social grounds suggest to the reporter the possibility of even more fundamental developments. It is recognized, however, that in confining reconstruction within the limits set by private property, individual initiative, the profit motive and the price system, the Administration is raising the question whether business confidence based upon the profit incentive will supply adequate motive power for the reconstructed system. In the international field the New Deal implies coöperation, but only on condition that other countries adopt positive policies for the revival of business and the restoration of price levels. Failure by other countries to accept this condition, and, indeed, the efforts of a considerable bloc to meet the depression with policies diametrically opposed, namely, adherence to the gold standard and the reduction of costs and prices (including wages), have in fact effectively obstructed international economic coöperation.

Criticism of the report must turn upon minor points; the impeding effect of the Securities Act upon the securities market is perhaps overemphasized; reference to the elaborate research program of the

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Division of Research and Planning of the National Recovery Administration fails to indicate that the Administrator, in choosing between "action" and "academic conjecture" whole-heartedly favored the former; much of the disorder of the Recovery Administration is charitably accepted as adventurous experimentation. But these are matters open to argument and the views expressed are undoubtedly much influenced by the date of the report, namely, August 1934. Its clear objectivity, orderly arrangement and full documentation suggest the desirability of a new edition brought up to date. Comparison of declarations of policy with the subsequent action, of the realized with the anticipated effects of policy, and consideration of the growing body of criticism notably, but accountably, absent from the present report, would then be possible. Such a volume would be of the greatest value within as well as without the United States.

ARTHUR ROBERT BURNS

COLUMBIA UNIVERSITY

Scritti e discorsi di Benito Mussolini. Edizione definitiva. 9 Vols. Milan, Ulrico Hoepli Editore, 1934-1935.

These nine volumes are presented as the definitive edition of the writings and speeches of Benito Mussolini. Nothing could be further from the truth. This edition can in no sense whatever be regarded as definitive. In the first place, all the writings and speeches have not been included. In the second place, the texts of many speeches and writings published in these volumes have been tampered with.

Not a single speech or writing by Mussolini during his career as a socialist journalist and propagandist up to October 1914 is contained in these volumes. For almost two years, between 1912 and 1914, Mussolini edited the *Avanti!,* the daily newspaper of the Italian Socialist Party, but no evidence of his editorials in this paper is given in the "definitive" edition before us. The omission can easily be explained on political grounds. Mussolini, who has written a preface for the present edition, obviously prefers to suppress his socialist record as long as he can.

The "definitive" edition begins with Mussolini's first article in the first number of his daily newspaper, *Il Popolo d'Italia,* which appeared at Milan on November 15, 1914, and ends with speeches he delivered in 1935. Further volumes will contain his later speeches and writings. Even for the period covered in the present edition,

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from 1914 to 1935, scores of signed articles and a goodly number of speeches have been omitted. For the year 1914, Mussolini's article of November 15, 1914 is included in this edition, but the articles published in *Il Popolo d'Italia* on November 20, 22, 24, 25, December 1, 20, 25, 27, 31, 1914, are omitted. The definitive edition contains Mussolini's writings in *Il Popolo d'Italia* for May 11, 17, September 14, December 27, 1915, but it shows no trace of Mussolini's articles in the same paper for April 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 21, 22, 26, 27, August 1, 2, 3, 4, 6, 8, 11, 14, 15, 16, 17, 21, 22, 26, 28, 29, 31, 1915. Mussolini's speech of November 10, 1918 is published but his speeches of May 19, November 12, 1918, March 20, 1919, are omitted. The period from January to March 23, 1919 is represented by one article and one speech. Omitted are the articles Mussolini published on January 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 22, 24, 25, 26, 28, 29, 30, February 1, 2, 3, 6, 7, 8, 9, 11, 12, 13, 15, 16, 18, 19, 20, 22, 24, 25, 27, March 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 22, 1919. March 23, 1919 is the official date of the founding of the Fascist movement. The present edition contains the speech which Mussolini delivered in the morning of that day, but it does not contain the speech delivered in the afternoon and in which, by the way, he demanded a republic in Italy and the abolition of the Italian Senate.

What is known as Mussolini's *Autobiography,* published in New York in 1928 but never published in Italy, is not included in the definitive edition of his writings, although he wrote in 1928: "There is no other autobiography by me." Since this book has been and still is regarded as an authentic autobiography by his admirers and by many of his enemies, it is desirable to point out here that it is a shameless literary fraud, for it was written, not by Mussolini, but by Richard Washburn Child, who was American Ambassador to Italy during the Harding Administration.

Textual accuracy obviously has been sacrificed to other purposes in the editing of those speeches and writings that have been included in the nine volumes under review. Vol. I opens with a reprint of Mussolini's editorial, *"Audacia"* (pp. 7-10): on page 8 Mussolini is made to say "the destinies of Europe", but in fact the original reads "the destinies of European socialism"; and words written in the interest of the Social Revolution in addition to fifteen lines or so of the original article are omitted. Vol. I, pages 305-7, repro-

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duces the speech delivered by Mussolini on April 7, 1918 in reference to the first anniversary of America's intervention in the Great War. In two places, at pages 305-6, we read "America" instead of reading "Wilson", who is called in the original "The Sage". In an article published by Mussolini in *Il Popolo d'Italia,* September 30, 1919, words about the fiasco of Badoglio (the same General Badoglio who is now in Ethiopia) in connection with D'Annunzio's occupation of Fiume are omitted (see vol. II, pp. 27-30).

We do not have sufficient space to elaborate on numerous other omissions and mutilations. It is unfortunate that the edition before us is being translated into German, French and Spanish. We hope it will not be translated into English.

GAUDENS MEGARO

COLLEGE OF THE CITY OF NEW YORK

Enquiry on National Public Works. Geneva, League of Nations, Organisation for Communications and Transit; New York and Boston, World Peace Foundation, 1934.—281 pp. $3.00.

Public Works Policy. International Labor Office Studies and Reports, Series C, No. 19. Geneva, International Labor Office; New York and Boston, World Peace Foundation, 1935.—iii, 166 pp. 4s.; $1.00 (paper), $2.00 (cloth).

The first of these studies is a fact-finding compendium, made up almost directly of replies from twenty-nine countries to a circular letter. As is to be expected with responses from such diverse countries as the United States of America and Esthonia, Salvador or Iraq, there is great unevenness in the adequacy and comprehensiveness of the statements included. The data from the United States go back far enough to afford a comparison of pre-depression and depression years, and cover federal, state and local governments, with estimates of private construction; but for many countries lack of pre-depression figures, and uncertainty as to the scope of different branches of government, make the data more baffling than informing. They afford, nevertheless, valuable source-material in a difficult field.

The second study, by the International Labor Office, is an analysis of principles, problems and policies of public works by an organization which has consistently advocated the use of this device as a regulator of economic activity. Starting with the Principles of

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Public Works Policy, the report takes up Recent Trends, Financial Problems, Methods of Operation and Conditions of Employment, Coordination and Centralization, and ends with recommendations as to policy. The experience of each separate country, instead of being presented as a unit, as in the other study, is broken up and fitted into this framework of analysis. Among the topics studied are the effects of public works on employment, costs per man-year in different countries, the relative place of taxes, loans and accumulated reserve funds as means of financing, the encouragement of private expenditures, and international aspects of public works policy. The existence of divergent wage policies is recognized, varying with varying emphasis on fiscal economy or on the sustaining of purchasing power; while relief work as such, in contrast to the type of policy favored by the International Labor Office, receives scant recognition.

The report admits frankly that the results so far recorded are disappointing, from the standpoint of assisting recovery or industrial regularization. It recognizes the great difficulties in the way; difficulties of political and official psychology, of administrative organization, of financial ways and means, and practical limits on the postponement of needed and useful works at times when resources are available to finance them. Nevertheless it stands stoutly by its main thesis: that the regular budgets of public works and public purchases in general can and should be so planned and scheduled as to be carried out more slowly in prosperous times and more rapidly in times of depression; and that this may mitigate the severity of these movements.

The planning requires a standing, centralized body, with power over outlays of the central government and able to stimulate local governments to coöperate by means of grants. As to methods, taxes laid at the time of performing the works are of little use. The report favors the accumulation of reserve funds in advance, but appears to recognize that as a practical matter loans, within the limits of fiscal soundness, must be the main resource. Not the least interesting feature of the report is the way in which it makes real the international aspects of public works: a matter likely to be somewhat nebulous to an American reader. The document affords an extremely valuable combination of analysis and recorded experience on one of the most logical and defensible public policies for mitigating the severity of economic fluctuations.

J. M. CLARK

COLUMBIA UNIVERSITY

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Royal Instructions to British Colonial Governors, 1670-1776. Volumes I and II. Collated and edited by LEONARD WOODS LABAREE. New York and London, D. Appleton-Century Company for The American Historical Association, 1935.—xxv; ix, 937 pp. $10.00.

Students of our colonial era have long recognized the importance in American constitutional development, as well as in the evolution of British policy, of the "instructions" issued to successive royal governors. In the normal royal province, this document, taken together with the governor's commission, served as a sort of provincial constitution, defining the authority of executive, legislature and judiciary, regulating their relations with each other and with the home government. The instructions are also significant for the student of economic conditions and policies, dealing as they do with such matters as overseas commerce, Indian trade, currency problems, immigration, slavery and land policy. In his recently published *Royal Government in America* Professor Labaree has illustrated the uses of this material for constitutional and administrative history. In the present documentary volumes—largely a by-product of his monograph—he has rendered substantial service to workers in other fields of colonial history.

As explained in the introduction, the publication *in extenso* of more than two hundred sets of "general instructions" was out of the question. Not only would the sheer bulk of such a publication make it impracticable; it would also involve quite useless duplication. Though important changes or additions were made from time to time, and though there were some local variations, the instructions issued to a new governor were largely reproduced from those of his predecessor, and they were much the same from province to province. Under these circumstances, Professor Labaree has not undertaken the complete publication of any single set of instructions, but has grouped the articles by subjects. Thus for the instruction regulating judicial appeals to the Privy Council, we have first what may be called the standard form. Then follow notes indicating by provinces and years those instructions in which the same form was used, together with indications of all significant variations as they occurred. This plan has been skilfully worked out to secure the maximum of information in the necessarily limited space.

The texts of these documents have been collated with manuscripts in the Public Record Office, or such transcripts as those in the

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Manuscripts Division of the Library of Congress; only one in six of the sets of "general instructions" has ever been printed in full. The labor involved in this undertaking has been immense, and the results have been presented in a happy combination of careful scholarship with common sense.

The appendices include a list of the royal governors with the dates at which their instructions were given; three representative commissions, issued respectively in 1673, 1739 and 1773; and finally, the "Observations" of three governors, commenting on their instructions and suggesting modifications based on their experience. In these appendices, as in the body of the work, insular as well as continental colonies have been included.

When so much has been given, one hesitates to suggest other desiderata. The editor indicates some good reasons for not including instructions before 1670; but it would have been helpful for purposes of comparison to place side by side one full set of earlier date with another illustrating the eighteenth-century development. It would be suggestive, for instance, to have such a juxtaposition of the instructions given to Governor Berkeley of Virginia in 1641 and those issued to Lord Dunmore when he was sent to the same province in 1771.

EVARTS B. GREENE

World Economic Survey, 1934-35. Geneva, League of Nations, 1935. (May also be obtained from World Peace Foundation, Boston and New York.)—310 pp. $2.00.

In these days of political uncertainty and international confusion, when the prestige of the League of Nations has lost some of its glamour even in the eyes of the most devout admirers of the Geneva institution, the *World Economic Survey* prepared by its Economic Intelligence Service is to be particularly welcomed. For whatever one may think of the policies of the Council of the League, the excellence of the work done by the Financial Section and the Economic Intelligence Service cannot be doubted. Not only is the *World Economic Survey, 1934-35* probably the most convenient and authoritative collection of valuable and up-to-date information on the economic conditions of the world, but it is also characterized by that broad international and non-partisan approach which, unfortunately, has been only too often lacking in the other fields of the League's activity. Although the ideas embodied in the *Survey* are not strik-

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ingly new or original, this clear and unequivocal statement at the present juncture is an event of considerable importance which deserves the careful consideration of statesmen and economists.

Two of the many significant conclusions which emerge from the *Survey* should be emphasized here. The first of them is the uncertain and precarious character of the recovery which depends entirely upon national markets and national policies. The volume opens with the ominous statement that "the economic outlook at the beginning of 1935 was distinctly more confused and unpromising than it had been a year earlier." The reason for this unfortunate situation is the fact that the effect of domestic measures for combating depression is necessarily strictly limited and has a definite tendency to decline with the passing of time. The *Survey* wisely observes that "The statistical evidence that is available to measure the general progress achieved in 1934 reveals substantial gains, but closer analysis supports the conclusion reached by the Bank for International Settlements that 'With the passage of time it becomes more and more clear that no fundamental, durable recovery can be hoped for unless and until a general stabilisation of at least the leading currencies has been brought about.'" And it is also pointed out that despite the recovery achieved, unemployment in 1934 was still more than double that in 1929. "The conclusion is irresistible", says the *Survey,* "that until some significant expansion of international trade is achieved, there will remain, despite substantial recoveries of national production, a 'hard core of unemployment' in practically every industrial country."

The second important conclusion, which should be of particular interest to the American reader, is the magnitude of the part played today by the United States in the economic life of the world. The New Deal is examined by the authors of the *Survey* with considerable care and its international implications are revealed. None of the measures of the Roosevelt Administration has had a deeper effect upon the international economic situation than its monetary policy. "Throughout the later part of 1934 and the early months of 1935", says the *Survey,* "the dominating factor in the world economic situation has been the continued drain of the precious metals, gold and silver, to the United States." It may be reasonably doubted whether the dislocation abroad produced by President Roosevelt's monetary measures was really compensated (if this can be called a compensation) by the results achieved at home. It is in the possibilities of

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further monetary disturbances that the experts of the League see one of the greatest dangers to recovery.

It is hardly necessary to add that the volume under review, the contents of which had been barely touched upon here, is indispensable to every student of international affairs.

MICHAEL T. FLORINSKY

COLUMBIA UNIVERSITY

The Catholic Tradition of the Law of Nations. By JOHN EPPSTEIN. London, Burns & Oates; Washington, Catholic Association for International Peace for the Carnegie Endowment for International Peace, 1935.—xxi, 525 pp. $3.50.

Perhaps no problem in the whole field of Christian ethics has been harder to solve than the reconciliation of war with moral principle. That individuals and peoples professing the high ideals of Christianity should through century after century be found having recourse to war has been a paradox difficult of explanation. To dismiss the problem by questioning the sincerity of those professing the principles is an easy solution but clearly contrary to the historical facts. For what history puts before us is a genuine conflict between ideals and the hard realities of life, a conflict which doubtless did not trouble seriously the great masses of the people but which did challenge the theologians and doctors of the Church upon whom it devolved to propose a rule of conduct which political leaders might find it possible to follow under the practical conditions with which they were confronted.

It is in throwing light upon this vital problem that Mr. Eppstein's volume will prove to be of immense service not only to his fellow churchmen but to all those interested in the progress of moral conduct in its relation to war and in the struggle which man is forever making to adjust his principles to the conditions of a given age. The volume is offered by the author as "a compendium of the teaching and tradition of Catholic Christianity upon international morality", and it undertakes "to trace the evolution of ideas through many centuries and to study the application in many lands and by many minds of the principles laid down from time to time by the Popes." The historical method has been followed, so far as possible, throughout the work. Part I deals with the origins of Christian doctrine upon peace and war in the New Testament and in the writings of the Church fathers to the days of St. Ambrose. Part II carries on the doctrines of the ethics of war from the significant teachings of St. Augustine down to the theologians and publicists of the present day. The

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author then, in Part III, examines the doctrine and practice of the Church with regard to the duty of preserving peace; and in Part IV he takes up the problem of the moral unity of mankind and the efforts made to give to the community of nations a more definite organization, culminating in the establishment of the League of Nations. Lastly, in Part V, the author undertakes an examination of the problem of Nationality, "the most dynamic force in the international life of the present age." An appendix contains, in addition to familiar documents relating to present international organization, a list of "pacific interventions of the Holy See" from the twelfth to the twentieth centuries.

Readers of all religious denominations will give a warm welcome to the contribution which this volume makes to the development of moral ideals in their relation to what has become without question the most pressing social problem of modern times. Without minimizing the importance of organization in the development of a stable system for the maintenance of international peace, it is clear that whatever machinery of arbitration and conciliation be available to the nations there is little hope of its effective operation unless greater emphasis is placed upon the moral unity of mankind. For it is the consciousness of this moral unity which alone gives promise of inspiring between nation and nation those concessions of material interest which are necessary to break down the existing barriers of economic isolation and temper the fanatical nationalism which is at the present day the greatest menace to peace.

C. G. FENWICK

BRYN MAWR COLLEGE

The Formation of Capital. By HAROLD G. MOULTON. Washington, The Brookings Institution, 1935.—xi, 207 pp. $2.50.

Income and Economic Progress. By HAROLD G. MOULTON. Washington, The Brookings Institution, 1935.—xi, 191 pp. $2.00.

These two books form the third and fourth volumes in the comprehensive study by the Brookings Institution of income and economic progress. The first volume in this series, *America's Capacity to Produce,* dealt with estimates of productive capacity of our industrial system and of the rate of its utilization for the period from 1900 to 1929. These studies, as interpreted by the authors, indicated that the relative extent of idle capacity was not significantly higher during

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the years from 1925 to 1929 than during the pre-war years; but that even in the period of prosperity, such as prevailed in the late 'twenties, about 20 per cent of the existing effective capacity failed to be utilized. The second volume in the series, *America's Capacity to Consume,* assembled a number of estimates relating to the volume of national income, its distribution by size among families, and the relation between incomes and savings. These estimates were cited as indicating a striking inequality in the distribution of our national income; and it was suggested that the degree of such inequality tended to increase from 1920 to 1929. As a result of such inequality, a considerable proportion of the population did not have the wherewithal to develop fully their demand for goods, while another part of the population, very small in number, saved a large part of their incomes, their savings accounting for a large proportion of the total savings of the nation.

The undesirable implications of these basic conclusions as seen by the authors, and the various possible lines of ameliorative policy, are discussed in the third and fourth volumes of the series. In *The Formation of Capital* Dr. Moulton proceeds to demonstrate the effect of the inequality in the distribution of income on the processes of capital accumulation in our economic society. Beginning with a definition of capital that confines it to "commodities arising from past production which are being directly utilized for further production", the author proceeds to develop the dilemma of capital formation. "If a larger percentage of the national income is saved we have abundance of funds with which to create new capital; but such capital is not profitable. If, on the other hand, a larger percentage is devoted to consumption channels, it is profitable to construct new plant and equipment; but there are inadequate funds for the purpose" (p. 35). The dilemma has to be solved so as to show how concurrent expansion of consumption and capital formation are possible, since statistical evidence indicates that the expansion and contraction occur during the same periods in both consumption and capital formation. Also, the basic primacy of consumption and the derived nature of captal formation are shown by a review of business cycles in the United States which, it is said, indicates that at the downturn the break in the production of consumption goods precedes that in the output of producers' goods; and that during three depressions in the history of the United States it was a marked rise in the purchasing power of consumers that lifted the economic system out of the trough.

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The dilemma is solved by the credit-creating capacity of the banking system. The ability of banks to extend a volume of credit considerably larger than the cash savings of the ultimate income recipients (or any other cash balances that may arise in the system), enables capital formation to be financed at the time when consumption expands. Commercial banks finance not only needs for circulating capital, but also for fixed capital. Still, while the credit-creating power of banks solves the dilemma, it does not of course abolish the dependence of capital formation upon the volume of consumption. The restriction of consumption, arising from the inequality in the distribution of income, retards also the formation of capital. The large volume of savings, resulting from such unequal distribution of income, is unable to find investment in expansion of productive capacity and spills over into speculative investments in the security and other asset markets. This, according to Dr. Moulton, is demonstrated by the experience of the 'twenties, when the volume of capital formation was held back by the volume of consumption, and a large volume of excess savings went to bid up prices on the security and real estate markets.

Having come to this conclusion, Dr. Moulton proceeds in the last volume, *Income and Economic Progress,* to consider the various ways out of the difficulty. The possibility of solving the problem by selling the surplus production of our national economy on the foreign markets is ruled out, for obvious reasons. The equalization of wealth is impracticable since it would involve government ownership and management of all the capital of the country. The equalization of incomes is also too drastic a remedy, and besides would add at most but a few hundred dollars to the family income of the masses. Of the other means, more practicable, the use of taxation and public enterprise appears to the author to be limited by the volume of enterprises that can be undertaken advantageously by the government as a means of passing on to the low income recipients the purchasing power taken from the high income classes. The raising of wages is also unsatisfactory, since it is confined to only some of the low-income-earning groups, arouses conflict between wage earners and the farming groups, and is difficult of materialization. The most effective way out is a "gradual and persistent revamping of price policy so as to pass on the benefits of technological progress and rising productivity to all the population in their role of consumers" (p. 161). This will not destroy the profit motive, but on the

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contrary, assure its operation on a basis that would make for greater capital expansion in the future than was true of the past. It does involve an attack upon the monopolistic organizations which have developed during the last half-century, but it is not an attack on "the system of private capitalism". It is "rather to return to the very logic upon which that system was justified and extolled by both lay and professional students of the economic process during the days when the system was assuming its present general character" (p. 162).

This brief review of the discussion in the two volumes indicates clearly the broad implications of the thesis developed, and serves to show the importance of a critical evaluation of the reasoning and the recommendations. In this evaluation, we have to take for granted the conclusions reached in the first two volumes of the series concerning the level and trend in the inequality of incomes, in the extent of overcapacity, in the source of savings, etc.; although a critical appraisal of the underlying estimates would reveal a generous zone of doubt. But even with these findings taken for granted, the analysis of their implications, and still more the discussion of the measures of policy, give rise to serious questions concerning the validity of the analysis and the exact grounds upon which one line of ameliorative policy was singled out as much more promising than all others.

Of these numerous questions only some can be treated in this review; and we may begin with the economic dilemma of capital formation, for it indicates clearly the one-sided character of the analysis. Let us assume that a larger share of the national income has been diverted to savings and a smaller share retained for consumption. This will release funds for a greater volume of capital formation. But, according to Dr. Moulton, the contraction in the share of the national income going to consumption will render the expansion in capital formation unprofitable.

This conclusion rests obviously upon a neglect of the equilibrating mechanism of the interest rate. An increase in the share of national income going to savings will tend to depress the interest rate, which in its own turn will render economically feasible a number of capital investments, heretofore unprofitable. Thus, whether capital formation will expand or contract, following upon an increase in the rate of savings and a decrease in the rate of consumption, will depend upon the relative weight of the depressive influence of the contraction in consumption and the expansive influence of the decreased rate of interest.

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The statistical demonstration of the concurrence of expansion in the output of consumers' goods and in capital formation is of little relevance both to the dilemma as presented by Dr. Moulton and to the thesis of classical theory that capital formation is, under assumed conditions, possible only at the expense of current consumption. Neither does the evidence adduced by Dr. Moulton to show that changes in consumption lead those in capital formation prove conclusively the primacy of changes in the volume of consumption in determining changes in the volume of capital formation. Even disregarding the scantiness of the empirical evidence adduced, one is bound to suggest that such leads and lags should be established between specific branches of consumption and the corresponding branches of capital goods industries providing instruments of production for the former, rather than for consumption and capital formation as a whole. The relative timing of these two broad totals may easily be affected by factors unconnected with the basic relation which Dr. Moulton has in mind (e.g., the different ratios of capital equipment to production of finished products). Moreover, even were the lag of consumption over capital formation established from production series for specific branches, we should still consider the fact that the period of production is often appreciably longer in the case of capital goods than in consumers' goods, and therefore a comparison of the series on output may give a misleading impression of the relative timing of the initiation of the two processes. And finally, even if we accept Dr. Moulton's interpretation of the course of revival in past business cycles in this country, the fact that during so many cases in the past a rise in consumers' purchasing power led the revival in the capital goods industries is no indication that it wll continue to do so in the future, unless it be shown what particular persistent mechanism accounts for this lead.

Dr. Moulton's analysis of the factors determining capital formation is one-sided and the statistical demonstration is not conclusive. This impairs the basic strand in that interpretation of the evidence of the first two volumes of the series, which deduces that restriction of consumption arising from the inequality in the distribution of income acts as a rigid brake upon the volume of capital investment; and tends to produce an excessive volume of savings which, not being capable of investment, spills over into speculation and bidding up the values of negotiable assets. Since the volume of consumption is only one of the factors that affect changes in capital formation,

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its restriction by the unequal distribution of income is not necessarily a brake upon the expansion of capital. Indeed, many have made out an impressive case for exactly the opposite, viz., that the unequal distribution of incomes and the resulting large savings have forced and accelerated expansion of capital investment. Such a thesis, as one-sided as Dr. Moulton's, cannot be controverted by a mere neglect of all factors except one. While the attempt in chapter x to demonstrate statistically that during the period from 1923 to 1929 there was a volume of savings in excess of capital investments, spilling over into appreciation of assets, cannot be evaluated without an analysis of the first two volumes in the series, it is far from convincing for a number of reasons. There is in this chapter a curious identification of capital formation with the volume of productive new issues, either of stocks or of bonds and mortgages; there is double counting, in the sense that savings arising from realized gains on sales of assets are first counted as savings and then in turn are treated as the cause of the very appreciation in the value of assets which was the source of these savings; and finally, it is to be doubted that the budget studies from which savings have been estimated, took complete account of expenditures on acquisition of consumers' durable goods such as automobiles, furniture, etc., and hence a comparable estimate of capital formation might have been more in accordance with savings, were consumers' durable goods included in capital.

The analysis in the last volume, dealing with remedies, is surprisingly sketchy and arbitrary. Since Dr. Moulton sees such evils flowing from inequalities in the distribution of income, one would naturally expect him to advocate, as Hobson does, a more equitable distribution of national income, to be attained either by progressive taxation of both income and inheritance, by development of forms of social insurance, or, if necessary, by direct intervention and such reorganization of our social system as would bar large incomes from property, the source which is responsible, directly or indirectly, for the existence of high income categories. But all such proposals are dismissed cavalierly on various grounds, some because of the limitations of state efficiency; others on the specious ground that they are too negligible, since an equitable distribution of incomes would add only a few hundred dollars to the average family income in the low income groups. The latter is rather a curious statement, in view of the importance attributed in the second and third volumes to exactly the fact that it is the failure of the economic system to add this sum to

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the incomes of low income recipients that was the source of all the trouble.

But what of the author's own remedy? Is the proposal to change the price policy and to attack monopoly any less impracticable than the proposals for the direct redistribution of wealth or income? Does Dr. Moulton conceive these monopoly forms in our economic structure and their price policy as something else but an integral part of the developing capitalist system, and imagine that one can overcome them without a revolutionary upheaval of the existing system? Dr. Moulton thinks that such a change in price policy is possible and is merely a reform measure, since it can be demonstrated that such a price policy will lead to increased profits. This latter statement appears to this reviewer an apex of inconsistency. It is profits that permit large property incomes and account for inequalities in the distribution of income. If lowering prices and thus increasing the purchasing power of the masses will increase profits, it will also increase the inequality in the distribution of income, unless more equitable distribution of profits is assumed, a contingency not suggested by Dr. Moulton. Either the proposed remedy is no remedy at all, or it implies an utopian attempt to turn back the wheel of capitalist development to the era it had long passed.

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Out of My Past: The Memoirs of Count Kokovtsov. Edited by H. H. FISHER. Translated by Laura Matveev. Stanford University, Stanford University Press; London, Humphrey Milford, Oxford University Press, 1935.—xx, 615 pp. $5.50.

The Russian edition of the memoirs of Count Kokovtsov, Russian Minister of Finance in 1904-1914 and Chairman of the Council of Ministers in 1911-1914, appeared in Paris in 1933. Professor Fisher, with the author's consent and collaboration, has somewhat condensed the original Russian text and has acquired a new claim to the gratitude of the English-speaking students of Russia by bringing out the English edition of Count Kokovtsov's illuminating and candid account of a significant period in Russia's history.

Count Kokovtsov may well be considered as the most outstanding representative of that upper level of the bureaucracy which governed Imperial Russia in the name of the Tsar, subject, of course, to the

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ever present possibility of removal from office by their Imperial master. In spite of his advanced age—Count Kokovtsov was eighty when the Russian edition of his memoirs was published in 1933—the former Prime Minister of Nicholas II has preserved his remarkable physical and mental vigor and his memoirs bear witness that neither the passing of years nor the bitterness of exile has succeeded in undermining his pugnacious vitality. What is even more important, however, the outlook and philosophy of Count Kokovtsov do not seem to have been affected in any considerable degree by the stupendous events which had taken place in Russia since he was dismissed from office in January 1914. The war, the downfall of the Empire in March 1917, the advent of the Bolsheviks to power in October-November, the author's escape to Finland so dramatically related, and his long residence in Paris did not leave a strong imprint on his mind. This is what gives Count Kokovtsov's memoirs their particular value: they present probably the best and most comprehensive picture of the working of the machinery of the Imperial Government viewed through the eyes of one of its most distinguished leaders. It would be idle to look for a theory of the Russian Revolution in these memoirs of Count Kokovtsov, who repeatedly and rightly emphasizes that he is not writing a history. Nevertheless the "writing on the wall", the approaching doom of the Tsarist régime, appears before the attentive reader irrespective of the intentions of the author.

Count Kokovtsov belongs by birth, education and training to that small although not absolutely closed group which traditionally provided the Empire of the Tsars with its higher functionaries. He had an exceptionally brilliant career and it is with pride that he looks back at the ten years during which he administrated the Ministry of Finance and the success he achieved in balancing the budget and restoring Russia's international credit position in spite of the defeat suffered in the Russo-Japanese War and the following years of internal unrest. His account of his stewardship is frankly an apology, and he hardly does justice to the critics of his financial methods who pointed out that a financial policy under which the State Monopoly of Liquor became the chief pillar of the budget was fundamentally unsound and weak, a criticism the validity of which had been fully proved by the financial history of Russia during the war years. After the murder of P. A. Stolypin, Chairman of the Council of Ministers, in September 1911, during a gala performance in the Opera House of Kiev, Count Kokovtsov was appointed his suc-

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cessor. He was dismissed rather abruptly in January 1914, created a count — a rare distinction in Imperial Russia — and his active participation in the political life of the country was brought to an end.

The memoirs of Count Kokovtsov fully reflect that insurmountable difficulty which confronts every writer who attempts to offer an apology for the Russian Imperial régime and at the same time is compelled by honesty not to distort the facts too much. A faithful servant of the Russian monarchy, the author scrupulously refrains from openly criticizing his ill-fated sovereign, Nicholas II. In spite of his efforts, however, the mediocre and sinister figure of the last Autocrat of all the Russias, who was blindly and stubbornly pushing the régime of which he was the living embodiment toward its doom, dominates Count Kokovtsov's narrative. Just as devastating is the picture traced by the author of the Tsar's immediate entourage. The medieval and parochial atmosphere of the Russian court with its irresponsible adventurers and "dark forces" exercising steady pressure upon the Emperor, the absence of intellectual and moral stamina in the "elder statesmen", their pettiness and lack of vision and courage so long hidden from the world by resplendent uniforms, rows of decorations, and high-sounding titles, their trivial quarrels and squalid intrigues, their mistrust of and contempt for any criticism coming from outside the bureaucratic Olympus, especially from the opposition in the Duma—all these familar elements are dramatically and forcibly revived in Count Kokovtsov's pages. The general outline of his story has long been known to the historians, although the author supplies a number of important new details. This, however, does in no way detract from the value and significance of Count Kokovtsov's memoirs which should be read and pondered by every student of Russia. Better perhaps than any other volume of memoirs, *Out of my Past* helps to understand the conditions which brought about the Russian Revolution. One is rather inclined to wonder, indeed, how the Imperial régime succeeded in maintaining itself as long as it did. But if the impression with which at least the present reviewer closed Count Kokovtsov's volume is not the one intended by the author, it is his truthfulness and the very nature of the conditions he describes which are to blame.

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BOOK NOTES

The brief study, *Political Process: A Functional Study in American Government* (New York and London, Harper & Brothers, 1935; 188 pp. $1.50), by Dr. S. McKee Rosen, who is head of the Department of Political Science at the YMCA College in Chicago, should prove extremely helpful to those who seek realistically to understand the process of government in the United States. Dr. Rosen calls his book *A Functional Study in American Government,* and it is that in the best sense of that much abused word. "This present study", he says, "attempts to analyze some of the major forces—social, economic, as well as political—which actually condition and determine the way in which the machinery of government operates." It should be said, however, that there is very little in the book on the actual working of governmental machinery. For the most part, it is devoted to a description of the dynamic pressures which impinge upon that machinery. "To comprehend government as a process", he says, "as something vital and alive, one needs to go beyond a mere study of its forms. The various pressures, the pushes and pulls, as well as the fussing and fuming—these are in a real sense the steam which determines when and how the machinery operates." The legislative output and also the form and spirit of administration are presented here as the resultants, more or less, of parallelograms of social forces manifested in group pressures of one kind and another. Dr. Rosen relies pretty heavily upon such studies as the report of the Committee on Social Trends and the rather extensive literature dealing with lobbying and "pressure politics" in general. There are chapters dealing with public opinion, the press, business men in politics, organized labor, and farmers in politics. Political parties appear to Dr. Rosen as they did to Max Weber as aggregations of interest groups seeking to promote special interests under the guise of the general welfare. This is a refreshingly hard-boiled approach after the long line of sentimental treatises which have been written about this subject. Dr. Rosen believes, apparently, that men will everywhere pursue their interests, and that the forms which political and social institutions assume will reflect, as it were, a "balance of interests" in society at any given time. It is unfortunate that he fails clearly to see the implications in all this for the future. But that he may

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have regarded as a problem for the political theorist. Certainly this little book represents a healthy antidote to the formalistic textbooks on American government and politics with which students have been bored these many years.—PETER H. ODEGARD, The Ohio State University.

Under the title *State and Local Government in the United States* (New York, F. S. Crofts & Company, 1936; 351 pp. $2.80) William Seal Carpenter and Paul Tutt Stafford discuss certain problems of state and local government which they deem particularly important at the moment. Although one may quarrel with the omission of this or that, it is certainly refreshing to encounter a well-rounded text, the authors of which have had the courage to break away from the beaten path. The volume is obviously designed as a supplementary reading, either in a general course in American government or in a one-semester course on state and local government. As such it may well serve a useful purpose.—SCHUYLER C. WALLACE, Columbia University.

Walter Bagehot was right in thinking that Queen Victoria performed the duties of a constitutional sovereign better than any of her predecessors, but she did not perform them as well as he thought. This is made abundantly clear by Mr. Frank Hardie in *The Political Influence of Queen Victoria, 1861-1901* (New York and London, Oxford University Press, 1935; 258 pp. $3.50). The three rights of a constitutional monarch, as Bagehot formulated them—to be consulted, to encourage and to warn—give indefinite scope for the exertion of personal influence, and Victoria constantly exercised these rights; nor did she hesitate on occasion to take an initiative which they do not imply. From the evidence furnished by the published *Letters of Queen Victoria* and other sources Mr. Hardie is convinced, taking sharp issue here with Lytton Strachey, that the influence and prestige of the crown increased rather than diminished between the death of Prince Albert and the end of the reign. He shows that during this period the Queen was much more of a political partisan than contemporaries thought. "From 1876 to 1901 the Queen was quite undoubtedly a political partisan, a supporter of the Conservative party, an opponent of the Liberal party. It is even arguable that this was the case from the moment when, after Palmerston's death, there came into being a Liberal instead of a Whig party . . . and it was when Liberal Governments were in power that strife between the Crown and the Cabinet produced incidents which are of importance in the history of the Queen's political influence."—R. L. SCHUYLER.

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A revision of the second volume of Sir William Anson's classic treatise on the English constitution, corresponding to Mr. Maurice Gwyer's revision of the first volume, published in 1922, has long been overdue. This Professor A. Berriedale Keith has now given us in the fourth edition of Anson's *The Law and Custom of the Constitution,* Volume II, *The Crown,* Parts I and II (Oxford, at the Clarendon Press, 1935; xxxi, 325; xv, 414 pp. $10.00). To take account of the constitutional changes that have occurred since Anson prepared his third edition in 1907, without adding materially to the bulk of the work, necessitated considerable compression and the omission of much detail, but Professor Keith has succeeded in preserving the essentials of Anson's treatment of his subject while bringing it up to date in the light of recent scholarship. He has added valuable new chapters on "The Legislative Power of the Executive" and "The Crown and the Subject", and in the chapter on "The Crown and the Courts" he has included new sections on the judicial functions of the executive and the control of the executive by the courts. Changes of such scope and significance have taken place during the last quarter of a century in the constitutional development of the British Empire, a subject on which Professor Keith writes, that his revision of the chapter on "The Dominions and Dependencies of the Crown" is in large part a new piece of writing.—R. L. SCHUYLER.

Two publications of the University of North Carolina Press (Chapel Hill, 1934), *Organized Labor in Mexico* (315 pp. $2.50) by Marjorie Ruth Clark and *An American-Mexican Frontier* (xiii, 337 pp. $3.50) by Paul Schuster Taylor, tend to verify existing impressions regarding Mexican labor at home and in the United States. It has been no secret that the Mexican labor movement has been bound up with politics and, "even more harmful to labor interests, with the rise or fall of individual politicians" (p. 69); that its leaders frequently have been irresponsible and prone to engage in fratricidal strife; that while it has fed upon the Revolution and upon nationalism it has not been doctrinaire; and that the most advanced labor laws outside of Russia (p. 45) have been effective only in so far as it has been able to obtain their enforcement. By scholarly use of published and unpublished materials, Miss Clark lends authoritativeness to these conclusions in the first work in English devoted exclusively to the subject. Although the history does not entirely neglect social and economic causes and results, the discussion and interpretation center largely about the influence of the corrupt political

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atmosphere. The author believes that the outstanding exceptions to the general trend are the organizations of the electricians and railwaymen whose members have thus been placed in a highly favorable economic position. Taking up legislation, she holds that both labor and capital are still suffering the effects of the lack of preparation in social theory of those who incorporated the pertinent provisions into the Constitution (p. 49) and, what should be of significance for this country, that the demand for the substitution of state by federal control came from both sides (p. 215). With respect to the influence of organization upon the workers' welfare, she confirms a widespread belief that while certain intangible benefits may have survived, the tangible were eaten away by the growing conservatism of the government. For a number of years, Dr. Taylor has been making field surveys of the problem of Mexican immigration which have carried him into rural and urban areas in different sections of the United States and even into a source of emigration in Mexico. His reports have suggested that the great demand for Mexican labor has arisen in connection with the less skilled tasks of intensive, poorly diversified agriculture and that the coincidence of class and racial lines together with the spirit of gregariousness and nationalism among the immigrants has led to the establishment of public distinctions against them and to their social isolation. The "white" response to the negro has been influential although the attitude is not exactly the same. In urban areas lines of cleavage are less sharp. The present work deals with Nueces County, Texas, which, while its main economic activity is cotton production, includes the port of Corpus Christi. Although it is simply another field study and, confessedly, even more blurred in its impressions than usual, it tends to confirm the earlier suggestions. However, the author finds a hopeful sign in the efforts of professional and middle-class Americans of Mexican origin to organize for citizenship along lines traced out by other "hyphenated" groups and to face their problems with some realism (p. 249). The volume differs from its predecessors in its emphasis upon the historical background and the earlier part is therefore filled with that robust type of action which seems to form an almost inevitable part of the contents of literature concerning the Southwest. The author is convinced that the active warfare and border raiding of the past have markedly influenced contemporary attitudes and that while in these affairs the relationships of Americans and Mexicans were incredibly mixed, traditions and emotions have crystallized along ethnic lines (pp. 295-96). Dr. Taylor also embarks more designedly than previously upon

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a general study of race relations and incorporates the aborigines and the negroes within the scope of his survey. He believes that the contacts of so many races, viewed against a changing economic and political background covering four centuries, are "peculiarly illuminating" (p. 293) but the paucity of his suggestions together with the fact that the Indians appear simply as marauders detracts from the validity of this observation.—MAX LEVIN, New York City.

A bibliography of books and contributions to periodicals, dictionaries, etc., concerning public finance published between 1919 and 1933 is presented in the first volume (*Public Finance*) of a projected series, *Bibliography of Economic Science,* Institute for Economic Research, Osaka University of Commerce (Tokyo, Maruzen Co., Ltd., 1934; 4 + 154 + vi + 610 + 3 + 8 + 12 + 50 + 18 + unnumbered pages, $7.50). Only publications written in Japanese, English, German, French and Italian are included. The volume is divided into two main sections, the first covering items in Japanese. An elaborate classification of the subject matter under twenty-eight main headings and a number of sub-headings is supplemented by an author index. For the more important books, full tables of contents are reproduced. The bibliography is thus an ambitious project, on the whole well conceived and well carried out. It will have to be used with a certain degree of caution, however, because of a considerable number of minor errors, chiefly of a typographical nature. Moreover, judging from the manner of listing special commission reports on state tax systems in the United States, the problem of classifying the items to facilitate finding has been only partially solved.—CARL SHOUP, Columbia University.

In *An Introduction to the Documents Relating to the International Status of Gibraltar 1704-1934* (New York, The Macmillan Co., 1934; viii, 112 pp. $2.50) Mr. Wilbur C. Abbott has undertaken, with the assistance of the Harvard-Radcliffe Bureau of International Research, to bring together a list of writings dealing with Britain's mighty fortress at the mouth of the Mediterranean. He lists 572 titles, largely in English, Spanish and French. The works are presented in chronological order. There is a detailed subject index. The bibliography is apparently quite complete, though less rich in legal and military materials than might be supposed. It will be most useful to research scholars in European diplomacy. The excellent introductory sketch of the history of the stronghold leads the reviewer to hope that Mr. Abbott will write a general work on the subject, based upon the literature which he has so painstakingly collected.—FREDERICK L. SCHUMAN, University of Chicago.

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The two sumptuous volumes—*Forward-March! The Photographic Record of America in the World War and the Post War Social Upheaval,* Sections 1 and 2, by Frank J. Mackey and Marcus Wilson Jernegan (Chicago, The Disabled American Veterans of the World War, Department of Rehabilitation, 1934-5; 496 pp. $29.50)—contain little of interest to the student of history. The volumes contain several hundred photographs of various incidents connected with the American Expeditionary Force in the World War. There is no particular order followed in the arrangement of the photographs and the notes accompanying the pictures are not especially illuminating. At the end of the second volume is appended a chapter entitled "The World in Revolt" which contains an indiscriminate criticism of Communist activities in the United States, a less positive criticism of Fascist propaganda in the United States, and a sketchy account of Japanese-American relations. Apart from the interest that the collection of photographs may arouse it is difficult to see what useful purpose these volumes will serve.—NELSON P. MEAD, The College of the City of New York.

In his study of *The Making of Modern Iraq: A Product of World Forces* (Norman, University of Oklahoma Press, 1935; ix, 319 pp. $4.00) Professor Henry A. Foster gives an exact and carefully documented account of the evolution of Iraq from an area under Turkish domination to the status of an independent kingdom. His survey up to the outbreak of the World War is, naturally, only a summary, but is quite adequate, though he might have made some allusion to P. Schwartz's *Iran im Mittelalter nach den arabischen Geographen* (Leipzig, 1896-1929), which contains many references to this region, and even to the anonymous *Arab of Mesopotamia* (Basrah [1916]), which includes also Miss Gertrude Bell's *Asiatic Turkey.* After this introductory material, his study becomes highly detailed up to 1934. Throughout his work his desire for scrupulous accuracy is evident, and his effort to be impartial is obvious; and if one seeks a history, event by event, of an extremely interesting political phenomenon and of the actual outworking of the provisions of an "A" mandate, one could scarcely wish for a better book. Yet the volume seems, at least to this reviewer, to be one of careful research in written material and of exhaustive documentation rather than of profound understanding of the actualities underlying a situation of which Iraq was, after all, only a part. The political factors and the diplomatic exigencies of Europe appear to find little comprehension and scant sympathy with the author; and it is not quite certain that he has

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come into actual contact with the somewhat intricate Oriental mind. One gets the impression that he has approval for Iraqi claims, but views European motives with some suspicion. The truth, as usual, apparently lies somewhere between the two extremes. Professor Foster seems to be a bit naïve and rather idealistic; and there may be room for doubt whether the injection of idealism untinctured with practicality at Paris was altogether an unmixed blessing—a problem on which the time has scarcely yet come to pass a final verdict. If one who was much associated with Near Eastern problems at the Peace Conference may express an opinion, the exact value of the "American Commission to the Near East" was not quite certain; and there may be some dubiety as to whether the frequently expressed desires for a United States mandate were always inspired solely by idealistic motives. In speaking sternly of the Sykes-Picot Agreement and the Secret Treaty of London (which were not deemed reprehensible at the time when they were made), Professor Foster might have noted that they were in part incorporated in the *Accord tripartite entre l'Empire Britannique, la France et l'Italie,* signed at Sèvres, 10 August, 1920 (Art. 5), though annulled by the later Treaty of Lausanne. On page 88, it may be observed that Mr. Beer's memorandum on *The Future of Mesopotamia,* containing the word "mandate", has been published (G. L. Beer, *African Questions at the Paris Peace Conference,* New York, 1923, pp. 413-427). In sum, the book is of much worth as a history of outward events, but seems lacking in inward understanding of the causes of these events.—Louis H. Gray, Columbia University.

Within recent years *The Japan Year Book* (Tokyo, The Kenkyusha Press, 1935; xxxi, 1380 pp. $5.00 [available in the United States through the World Peace Foundation, Boston and New York]), published by the Foreign Affairs Association of Japan, continues to expand in size and in the number and variety of subjects treated. Replete with facts and figures, it is an indispensable reference work. The statistical tables presented in connection with almost every subject treated are drawn for the most part from official sources and are on the whole as reliable as any available. The work is divided into forty-three chapters dealing with such subjects as the Imperial Court, government, parties and politics, foreign relations, national defence, public finance, home and foreign trade, textile industry, fisheries, utilities, foodstuffs, agriculture, industries, communications, education, labor and labor movements, press and publications, literature, and a chapter each on Korea, Formosa, Saghalien and South Sea

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Islands under Japan's mandate. An interesting feature is the historical outline of the subject treated at the beginning of each chapter. There follows a special section on Manchoukuo and an Appendix containing important treaties and agreements. Among these is to be found the "Agreement concerning the Transfer of the North Manchuria Railway, 1935". The Appendix also gives a "List of Clubs, Societies, Associations, etc.", giving the year of establishment of the organization, its purpose and its address. The work is provided with an index. There is also a useful map of Japan in a separate envelope. —CYRUS H. PEAKE, Columbia University.

The practical value for the teacher of *Readings in Recent Political Philosophy* (New York, The Macmillan Company, 1935; xv, 776 pp. $3.90), edited by Margaret Spahr, can scarcely be denied. In it are given selections from the writings of leading political philosophers from 1776 to 1934. The source material for that period is enormous, while many even of the better-known works are not readily accessible. Moreover, previous textbooks and readings have generally been so arranged as to encourage an unfortunate dichotomy between the historical and the analytical or the contemporary study of political concepts, a dichotomy which, one may hope, this work will help to destroy. The actual selections given are in general well chosen. They bring out excellently the intellectual turmoil of the period, as well as the wide range of viewpoints existing contemporaneously within it. Their arrangement involves a compromise between the topical and the time-sequence method, so that neither doctrinal coherence nor historical continuity is completely sacrificed. The selections are sufficiently long and the connections between different passages are made with enough skill to give an understanding, not simply of the conclusions and viewpoint of their authors, but also of their methods and intellectual processes. Only with the Idealists, German and English, does one feel that much is lost in the procedure: this is probably inevitable when a close-knit system is involved, and constitutes a necessary limitation to the usefulness of readings as such. Certain omissions involve a more serious criticism. American theory between the Revolution and Bentley's *The Process of Government*, (1908) is entirely ignored, though this may be explained by a desire on the part of the editor not to duplicate the work of editors of special readings in that sphere. In dealing with the Historical School, it seems peculiar that the editor has given no space to the works of Gierke and Maitland, though adequate selection would manifestly be difficult. The connection between liberalism and nationalism, so

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admirably represented by Mazzini, is likewise omitted; while the treatment of anarchism seems strangely inadequate when Godwin is left out. It also seems unfortunate that the new psychological school should have as its latest representative John Dewey, when so much important work along this line has appeared in the last few years. The editor's decision to choose mainly works written in, or previously translated into, the English language, leads to yet more unfortunate omissions. Nevertheless, despite all criticism, the work remains a valuable and well-made collection of readings and fills a gap of which teachers have long been aware.—THOMAS I. COOK, Columbia University.

The story of a nation struggling for its political and economic independence after a century and a half of foreign domination presents a most engaging subject. In his volume on *The Economic Independence of Poland: A Study in Trade Adjustments to Political Objectives* (Cincinnati, The Ruter Press, 1934; 134 pp. $2.00), Mr. Paul F. Douglass has touched but slightly upon the possibilities of this rich theme. His little volume, which will be probably criticized by many as somewhat pro-German, presents the argument that the economic policy of Poland, directed toward the expansion of her foreign trade with outlying countries at the expense of commercial intercourse with immediate neighbors, is distinctly detrimental to the interests of the young republic. This policy, in the opinion of Mr. Douglass, is primarily dictated by Poland's desire to break up completely the old-established ties between her various component parts and the states under whose sovereignty they had lived for over a century before 1919, and, above all, to emancipate herself from any vestige of German economic influence. It seems easier, however, to proclaim this policy than to put it into practice. The former Russian, German and Austrian provinces of Poland have not yet been welded into a homogeneous entity and the enforced severance of their long-established economic connections with the neighboring countries leads to the decline of their industries and agriculture and lowering of the standards of living. Mr. Douglass believes that the future of Poland lies in her close economic coöperation with immediate neighbors. He is inclined, therefore, to minimize the significance of Poland's free access to the Baltic Sea, which appears to him in the nature of a political ambition rather than as an economic necessity. And this, in spite of the fact, modestly relegated to a footnote, of the "miraculous growth" of the port of Gdynia. Only twenty-four ships entered Gdynia in 1924; in 1930 the number was increased to 2,200, and in

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1933—to 7,200. And this in spite of the depression! Mr. Douglass' argument, nevertheless, is not without interest and much of what he says seems reasonable and convincing, although it is not perhaps always easy to ascertain to what extent the deliberate policy of the Polish Government and not the general conditions of international trade and regulations for the restriction of the free movement of goods, enacted in other countries, are responsible for the unfortunate developments which he rightly deplores. His volume, unfortunately, suffers from serious shortcomings. It is poorly organized and badly written. The text, indeed, reads in places like a poor translation. It is overloaded with statistical tables, not less than ninety-three of them being squeezed within the limited space of some hundred and thirty pages. It is also to be regretted that in a book published at the end of 1934 some of the statistical data—and by no means unimportant—stop in 1929. Surely more recent information must be available. Careful editing and a good proof-reader would have rendered considerable service to Mr. Douglass' readers. With all its shortcomings the volume under review undoubtedly fulfills one useful purpose: it forcibly suggests the extreme danger involved in the righting of "historical wrongs".—MICHAEL T. FLORINSKY, Columbia University.

In the Panama Canal Zone the United States carries on a greater variety and a greater number of enterprises than it does anywhere else. It owns and operates the Panama Railroad, a shipping line, telephones and telegraphs, a power plant, a water-works system, hotels, department stores, laundries, bakeries, butcher shops, dairies, truck gardens and plantations, an ice cream plant, and a coffee roasting plant. It maintains schools, libraries, recreation centers, swimming pools, moving picture houses, and a cemetery. It owns all the residences, and provides the furniture. It furnishes medical service and drugs. In fact, it supplies practically every need of the residents.

The administration of these governmental services is the subject matter of Professor Marshall E. Dimock's book, *Government-Operated Enterprises in the Panama Canal Zone* (Chicago, University of Chicago Press, 1934; xxi, 248 pp. $2.50). As the result of a study made on the ground he concludes that the services carried on in the Canal Zone are a distinct credit to government enterprise. It is true that the conditions have been favorable for the successful conduct of government undertakings. The selection of the officials has been based on merit, and not on political considerations; there has been great need for efficiency in order to meet the requirements

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of military preparedness; and because of geographical remoteness from Washington there has been a minimum of political interference. Moreover, some weaknesses have appeared, the outstanding weakness being the development of an ingrowing bureaucracy. Unfortunately, there are not enough jobs on the Isthmus to take care of all the residents, and those on the ground, especially those born and raised there, are vehement in demanding that the available jobs be given to them. Though the climate takes its toll, and new blood is sadly needed, the Personnel Bureau never sends to the United States for an employee if a qualified person can be found on the Isthmus. None the less—taking everything into consideration—the author is emphatically of the opinion that American citizens may justly be proud of the government-operated services in the Panama Canal Zone. He asserts that there is probably not an undertaking in the United States, whether public or private, that has been so free from dishonesty; in fact, "it is doubtful whether any enterprise anywhere surpasses the record of faithful, unblemished stewardship recorded by the officials and employees of the Isthmian enterprises."

Sympathetic though he be toward the governmentally operated services, the author is convinced that their administration can be made even more effective. As matters now stand, some of the services in the Canal Zone are conducted by the Panama Canal (a legal and administrative entity created by Congress), and some are conducted by the Panama Railroad Company (a New York corporation all of whose stock is owned by the United States), the Governor of the Canal Zone being the head of both organizations. For this bifurcated system the author would substitute a unified legal and administrative entity. He recommends that a new corporation, to be known as the Panama Canal Corporation, be incorporated by Congress, all of its stock to be owned by the United States; and that this corporation acquire all the properties and interests of the Panama Canal and the Panama Railroad Company. The replacement of the dual arrangement by a single publicly owned corporation would achieve administrative autonomy and unified executive control; it would give greater latitude in financing and purchasing, free from political interference; and it would relieve Congress of duties that are a burden to it, and that the corporation could handle more advantageously. In our judgment the author's conclusions are fully supported by his careful study.—ELIOT JONES, Stanford University.

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In *Japan's Pacific Mandate* (New York, The Macmillan Company, 1935; vi, 244 pp. $3.00) Professor Paul H. Clyde of the University of Kentucky, who "was invited by the Japanese Government to make an extended voyage through the mandate", discusses many of the questions which so readily come to mind and so rarely find answer in general reading regarding the thousand or more islands which comprise Japan's Class C mandate in the Pacific. There are interesting chapters on the physical characteristics and early historical background of the islands, on the population make-up, on the occupations, education, and religion of the natives (the chapter on "Saving Souls in the South Seas" would not exactly please mission boards), and on the international aspects of such questions as the sovereignty and fortification of the mandate. The general tone of the volume is one of sympathy for the Japanese administration, and the chief documentary sources used are, of course, the *Annual Reports* of Japan to the Permanent Mandates Commission and the minutes of the Commission sessions. "The relationship between Japanese officials and the native population", says the author, "appears to be entirely friendly. . . . It is true that some of the natives dislike their Japanese rulers but the number is not large." Only "some of the older natives" who remember the pre-war German rule or occupied minor posts during the period of German control "would doubtless welcome its return." But "the great majority appear to have little interest in government and are probably as well content to be 'a sacred trust' of Japan as of any other state." Like so many other colonial possessions or "trusts", moreover, the Micronesian Islands have proved a drain on the budget of the controlling power. The total amount of direct Japanese subsidies until 1931 was about 21,000,000 yen; since 1932, there has been no direct subsidy. Regarding the illegal fortification of the islands, contrary to the mandatory articles, Professor Clyde believes that there is no ground for such suspicion. He is, therefore, impatient with those "super-nationalists . . ., both American and Japanese, [who] indulge freely in irresponsible talk of this sort."—WALTER CONSUELO LANGSAM, Columbia University.

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